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COURT OF APPEALS
BRIEF

06 SEP 12 PM 2:35

STATE OF WASHINGTON

BY Chm
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NO. 34978-7-II

**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

ELLEN HAHN,

Appellant,

v.

WASHINGTON STATE
DEPARTMENT OF RETIREMENT SYSTEMS,

Respondent.

**BRIEF OF RESPONDENT
DEPARTMENT OF RETIREMENT SYSTEMS**

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TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | INTRODUCTION..... | 1 |
| II. | PROCEDURAL HISTORY | 1 |
| III. | STATEMENT OF THE LAW | 5 |
| IV. | COUNTERSTATEMENT OF THE CASE | 7 |
| | A. Ms. Hahn Was A Part-Time Instructor At Highline College From September 1975 Through August 1981 | 7 |
| | B. From 1975 To 1981, The Bargaining Agreements Between Highline And Its Faculty Created Distinctions Between Full-Time Faculty And Part-Time Instructors, Relevant To The Teaching Assignments Of Each | 8 |
| | 1. The Workloads Of Full-Time Faculty Included Both Instructional And Non-Instructional Duties | 8 |
| | 2. The Workloads Of Part-Time Instructors Included Instructional Duties Only | 9 |
| | C. Pursuant To The <u>Mader</u> Settlement, Ms. Hahn Was Enrolled In The Teachers' Retirement System, Retroactive To September 1975, And Awarded 3.33 Years Of Service Credit | 13 |
| | 1. As Required By <u>Mader</u> , The Department Applied WAC 415-112-335 To Determine Ms. Hahn's Days Of Service At Highline From 1975 Through 1981 | 13 |
| | 2. The Department Converted Ms. Hahn's Days Of Service Into 3.33 Years Of Service Credit | 15 |
| V. | COUNTERSTATEMENT OF THE ISSUE | 17 |
| VI. | ARGUMENT | 18 |

| | |
|--|----|
| A. Standard Of Review: Ms. Hahn Has The Burden To Establish The Invalidity Of The Department's Final Order | 18 |
| 1. This Court's Review Of The Department's Findings Of Fact Is Governed By The Substantial Evidence Standard..... | 19 |
| 2. This Court's Review Of The Department's Legal Conclusions Is Governed By The Error-of-Law Standard..... | 20 |
| 3. This Court's Review Of The Department's Discretionary Actions Is Governed By The Arbitrary And Capricious Standard..... | 21 |
| B. There Can Be No Alternative To The Rigorous Numerical Analysis Required By RCW 41.32.270 And WAC 415-112-335..... | 22 |
| C. The FTE-F Numbers On Ms. Hahn's Contracts Accurately Represent Her Full-Time Equivalency For The Quarters In Question..... | 24 |
| 1. Highline's Official Business Records <i>Defined</i> A Full-Time Load In The Developmental Studies Department To Be 330 Contact Hours Per Quarter..... | 25 |
| 2. The Instructional Load Of The Developmental Studies Coordinator Is Not Determinative Of A Full Load For Part-Time Instructors | 28 |
| 3. Conclusion..... | 30 |
| D. The Department Correctly Applied WAC 415-112-335 To Calculate Ms. Hahn's Days Of Service As Prerequisite To The Calculation Of Her Service Credit | 31 |
| E. The Department Correctly Computed Ms. Hahn's Service Credit In TRS Plan 1 Using Her Days Of Service (As Calculated Under WAC 415-112-335) | 34 |

| | |
|--|----|
| 1. The Department’s Interpretation Of RCW 41.32.270 Is Beyond The Scope Of This Proceeding | 35 |
| 2. Even If The Term “Official School Year” Were Interpreted As Ms. Hahn Has Suggested, She Would Earn 3.33 Years Of Service Credit | 37 |
| 3. The Department’s Definition of an Official School Year Is Reasonable | 39 |
| VII. CONCLUSION | 43 |
| ATTACHMENT AFinal Order (<u>Appeal of Hahn</u> , DRS Docket 04-T-008) | |
| ATTACHMENT BService Credit Analysis: School Year, 170 days (Hearing Exhibit 3) | |
| ATTACHMENT CHighline Community College, FTE-F Definition | |
| ATTACHMENT DPart-time Contract, Spring 1976 | |
| ATTACHMENT EPart-time Contract, Winter 1977 | |
| ATTACHMENT FPart-time Contract, Winter 1980 | |
| ATTACHMENT GService Credit Analysis: School Year, 170 days (Extension of Exhibit B) | |

TABLE OF AUTHORITIES

Cases

| | |
|---|------------|
| <u>ARCO v. Utils. & Transp. Comm'n,</u> 125 Wn.2d 805, 888 P.2d 728 (1995) (citing <u>Jensen v. Dep't of Ecology,</u> 102 Wn.2d 109, 685 P.2d 1068 (1984)) | 21 |
| <u>Barry & Barry v. Dep't of Motor Veh.,</u> 81 Wn.2d 155, 500 P.2d 540 (1972)..... | 21, 39 |
| <u>Callecod v. Washington State Patrol,</u> 84 Wn. App. 663, 929 P.2d 510, <u>review denied</u> , 132 Wn.2d 1004 (1997)..... | 19, 20 |
| <u>Chancellor v. Dep't of Retirement Sys.,</u> 103 Wn. App. 336, 12 P.3d 164 (2000)..... | 21, 23 |
| <u>Dana's Housekeeping v. Dep't of Labor & Indus.,</u> 76 Wn. App. 600, 886 P.2d 1147 (1995)..... | 20 |
| <u>Franklin Cy. v. Sellers,</u> 97 Wn.2d 317, 646 P.2d 113 (1982)..... | 20 |
| <u>Grabicki v. Dep't of Retirement Sys.,</u> 81 Wn. App. 745, 916 P.2d 452 (1996)..... | 21, 23 |
| <u>Hadley v. Dep't of Labor & Indus.,</u> 116 Wn.2d 897, 810 P.2d 500 (1991)..... | 21, 43 |
| <u>Heidgerken v. Dep't of Natural Res.,</u> 99 Wn. App. 380, 993 P.2d 934 (2000)..... | 19 |
| <u>Heinmiller v. Dep't of Health,</u> 127 Wn.2d 595, 903 P.2d 433 (1995)..... | 19, 21, 31 |
| <u>Nghiem v. State,</u> 73 Wn. App. 405, 869 P.2d 1086 (1994)..... | 19 |

| | |
|---|--------|
| <u>Renton Educ. Ass’n v. Public Empl. Relations Comm’n</u> , 101 Wn.2d 435, 680 P.2d 40 (1984)..... | 20 |
| <u>Shofield v. Spokane Cy.</u> , 96 Wn. App. 581, 980 P.2d 277 (1999)..... | 20, 31 |
| <u>Shurtliff v. Dep’t of Retirement Sys.</u> , 103 Wn. App. 815, 15 P.3d 164 (2000)..... | 23 |
| <u>Wilson v. Board of Governors</u> , 90 Wn.2d 649, 585 P.2d 136 (1978), <u>cert. denied</u> , 440 U.S. 960 (1979)..... | 21 |

Statutes

| | |
|---------------------------|--------|
| RCW 28A.405.210..... | 40 |
| RCW 28A.405.240..... | 40 |
| RCW 28B.50.489..... | 2 |
| RCW 28B.52.020(8) | 40 |
| RCW 34.05 | 18 |
| RCW 34.05.452(1)..... | 27 |
| RCW 34.05.510 | 18 |
| RCW 34.05.570(1)(a) | 18 |
| RCW 34.05.570(1)(b) | 18 |
| RCW 34.05.570(3)..... | 19 |
| RCW 34.05.570(3)(d)..... | 20 |
| RCW 34.05.570(3)(e) | 19 |
| RCW 41.32.010(12)..... | 15, 35 |

| | |
|----------------------------|--------|
| RCW 41.32.010(26)(a) | 5 |
| RCW 41.32.025 | 39 |
| RCW 41.32.270 | passim |
| RCW 41.32.480 | 4 |
| RCW 41.32.498 | 4 |

Rules

| | |
|-----------------------------|------------|
| ER 801(c)..... | 26 |
| ER 803(a)(8) | 27 |
| WAC 415-112-260..... | 13, 22 |
| WAC 415-112-330..... | 13, 16, 22 |
| WAC 415-112-335..... | passim |
| WAC 415-112-335(1)..... | 32 |
| WAC 415-112-335(1)(a) | 13 |
| WAC 415-112-335(1)(b) | 14, 24, 33 |
| WAC 415-112-335(1)(c) | 15 |
| WAC 415-112-335(3)..... | 33 |

Other Authorities

| | |
|--|----|
| 5B Karl B. Tegland, <u>Washington Practice</u> § 801.10 (4 th ed. 1999) | 27 |
|--|----|

I. INTRODUCTION

Ellen Hahn was a part-time instructor in the Developmental Studies Department at Highline College from 1975 to 1981. During this period she was not enrolled in a State retirement system. Pursuant to the 2002 settlement of a class action lawsuit involving the retirement benefits of part-time instructors in the community colleges, Ms. Hahn applied to the Department of Retirement Systems (the Department) to receive increased retirement benefits. In response to her application, the Department enrolled Ms. Hahn in the Teachers' Retirement System (TRS) Plan 1, retroactive to 1975, and awarded her 3.33 years of service credit. Ms. Hahn has sought an additional 2.34 years of service credit, based on theories that exceed the terms of the settlement agreement and the applicable law. In this appeal, the Department respectfully requests this Court to affirm its determination that Ms. Hahn is entitled to exactly 3.33 years of service credit for her service at Highline College between 1975 and 1981.

II. PROCEDURAL HISTORY

In 1998, part-time instructors in the State's community colleges brought suit against the State, claiming that from 1977 to 1998 they had not received retirement benefits to which they were entitled.¹ CP 5 (Final

¹ This class action lawsuit was captioned Mader v. State of Washington, King County Superior Court Cause No. 98-2-30850-8 SEA. The plaintiffs were a class of part-time instructors in the State's community and technical colleges. The defendants were the State of Washington, the State Board for Community and Technical Colleges (State Board), and the Department of Retirement Systems (the Department).

Order, FOF 4).² Specifically, the plaintiffs claimed that the State had failed to calculate the days and hours worked by part-time instructors correctly and that, as a result, their service in the Teachers' Retirement System (TRS) had been understated. Whereas the colleges had credited *full-time* faculty members both for their "in-class" and "out-of-class" working hours, the colleges had credited *part-time* instructors only for their "in-class" hours. The plaintiffs sought to have WAC 415-112-335 applied retroactively to calculate their service, because the rule was specifically drafted to credit part-time instructors for both their "in-class" and "out-of-class" hours.³

In January 2000, King County Superior Court granted partial summary judgment. The court held that the State was required to calculate the service of part-time instructors using the methodology set out in WAC 415-112-335 retroactive to 1977. CP 5-6, 17 (Final Order, FOF 5; COL 10).

In 2002, the parties settled the Mader suit. CP 6 (Final Order, FOF 6). Pursuant to the Settlement Agreement, class members (i.e., part-time community college instructors) could apply to the Department of

² The Department's Final Order in the Appeal of Hahn, DRS Docket No. 04-T-008 (April 22, 2005), is attached as Attachment A. The Department will use the following numbering conventions throughout this brief. FOF x refers to Finding of Fact No. x; COL y refers to Conclusion of Law No. y in the Final Order. AR 262 refers to page 262 of the Certified Administrative Record.

³ WAC 415-112-335 was promulgated as an emergency rule in 1996, pursuant to changes in RCW 28B.50.489 and .4891. The formula used in the rule was intended to provide credit to part-time instructors for work performed *outside* the classroom. WAC 415-112-335 was codified as a permanent rule in 1997 without change. CP 16 (Final Order, COL 9).

Retirement Systems (the Department) to have their days of service credit recalculated under the terms of WAC 415-112-335, and thereby receive credit for their out-of-class working hours. CP 6, 17 (Final Order, FOFs 6 and 7; COL 10). By its terms, the Settlement Agreement was a full and final resolution of all claims that had been asserted or could have been asserted by part-time instructors to increase their retirement benefits. AR 267.

Ms. Hahn was a part-time instructor at Highline College (Highline) from 1975 to 1981. During this period, she was not deemed to be eligible for and therefore was not enrolled in a State retirement system. In February 2003, pursuant to the relief provided by the Mader Settlement Agreement, Ms. Hahn applied to the Department, asking the Department (i) to recalculate the days she had worked at Highline College from September 1975 through August 1981; (ii) to determine her eligibility for TRS Plan 1 based on this employment; and (iii) to determine the service credit to which she was entitled for this service. CP 6 (Final Order, FOF 8).

In March 2003, the Department determined that Ms. Hahn *was* eligible for membership in TRS Plan 1, effective retroactively to September 1, 1975, and that she was entitled to 3.14 years of service credit for her service from September 1975 through June 1981. CP 5-7 (Final Order, FOFs 3, 8, and 9). Subsequently, the Department modified its method for the computation of service credit for part-time community college instructors slightly. In October 2003, on the basis of the modified

methodology, the Department adjusted Ms. Hahn's service credit upward to 3.33 years. CP 6-7 (Final Order, FOF 9).

In June 2004, Ms. Hahn filed an administrative appeal, claiming that she was entitled to 5.67 years of service credit for the period in question.⁴ After a full evidentiary hearing conducted under the Administrative Procedure Act (APA), the Department entered a Final Order, concluding that Ms. Hahn was entitled to 3.33 years of service credit. On judicial review, the Pierce County Superior Court affirmed the Department's Final Order in all significant regards, and Ms. Hahn appealed.⁵ CP 65-68.

Although Ms. Hahn has purported to rely on WAC 415-112-335 throughout this proceeding, in actuality she has disregarded the precise numerical analysis required by the rule. Rather, she has proffered a methodology for the calculation of service credit that is entirely divorced from the law. The Department respectfully requests this Court to review its Final Order with the computational precision required by WAC 415-112-335 and to affirm its Final Order.

⁴ In TRS Plan 1, a member's service credit is used (i) to determine the member's eligibility for retirement, and (ii) to compute the member's monthly retirement allowance at retirement. See RCW 41.32.480, .498.

⁵ Pierce County Superior Court did remand one conclusion on which it had a question. The Court instructed the Department to review Ms. Hahn's service credit calculation to make certain that it had been calculated according to the plain language of RCW 41.32.270. CP 75. The Department undertook the review ordered by the Court and concluded that it had performed the calculation as required by the statute. Ms. Hahn did not question the Department's review in the superior court.

III. STATEMENT OF THE LAW

RCW 41.32.270 provides the method for the determination of service credit in TRS Plan 1 for full-time and part-time instructors alike. CP 15 (Final Order, COL 5). It provides,

Service rendered for four-fifths or more of the official school year of the . . . institution in which a teacher is employed, shall be credited as a year's service regardless of the length of the school term, but in no case shall more than one year of service be creditable for service rendered in one fiscal year. Service rendered for less than four-fifths of the official school year shall be credited for that portion of the school year for which it was rendered . . .

RCW 41.32.270. “‘Service’ for plan 1 members means the time during which a member has been employed by an employer for compensation.” RCW 41.32.010(26)(a); CP 15 (Final Order, COL 5).

Thus, to calculate the TRS Plan 1 service credit of a community college instructor under RCW 41.32.270, the Department needs two pieces of data: (i) the number of days in a community college's official school year, and (ii) the number of days worked by an individual instructor. CP 16-17 (Final Order, COLs 8-9). WAC 415-112-335 sets forth the method specifically addressed to determining the number of days that a part-time instructor at a community college has worked:

WAC 415-112-335 Calculating service credit for part-time community and technical college employees. Most community and technical colleges employ academic employees under contracts expressed in terms of a certain number of contact hours, which are usually limited to actual time spent in the classroom. Most academic positions require

more time to be spent providing services to the college than are reflected in the contact hours. However, actual hours worked are not submitted by the academic employees nor recorded by the college. This subsection adopts a method for estimating hours of work in order to determine membership eligibility and service credit in plan I and plan II . . .

- (1) **Plan I.** In order to estimate the *number of days worked* by a TRS I technical college or community college faculty academic employee for a particular month, the college will:
 - (a) Determine the number of working days in the month as defined by the college's adopted academic calendar;
 - (b) Determine the part-time workload for the employee. The part-time workload is the percentage of the part-time employees' [sic] weekly in-class teaching hours to the weekly in-class teaching hours required of a full-time instructor in that employee's discipline at the college; and
 - (c) Multiply the number of working days in the month by the academic employee's part-time workload.

The resulting number is an estimate of *days worked* by the academic employee during the month. The college will report this estimate to the department for the sole *purpose of determining plan I service credit* and/or membership eligibility.

- (2) **Plan II.** n/a

WAC 415-112-335 (emphasis added); CP 16-18 (Final Order, COLs 9-14).

IV. COUNTERSTATEMENT OF THE CASE

A. Ms. Hahn Was A Part-Time Instructor At Highline College From September 1975 Through August 1981

Ms. Hahn was a part-time instructor in the Developmental Studies Department at Highline from September 1975 through August 1981. CP 6-7, 11-12 (Final Order, FOFs 8,⁶ 11, 24, and 26). Courses taught in the Developmental Studies Department included, without limitation, basic reading, study skills, vocabulary, and spelling. CP 12 (Final Order, FOF 25). In many cases, the college kept the class size in Developmental Studies courses low to allow for individualized in-class instruction and learning, similar to a laboratory setting. During the roughly six-year period from 1975 to 1981, Highline's Developmental Studies Department had only one full-time faculty member (the division coordinator) and four to five part-time instructors during any given quarter. CP 14-15, 21 (Final Order, FOF 36; COL 26).

⁶ Ms. Hahn has objected to many of the Findings of Fact in the Department's Final Order. Brief of Appellant, at 20-28. She raised these same objections in her Trial Brief to the superior court. CP 37-43. This Court is referred to the Department's Response Brief, demonstrating that each of the challenged findings is supported by substantial evidence. CP 80-104.

Ms. Hahn has objected to FOF 8 insofar as it finds that she was a part-time (rather than full-time) instructor at Highline. Brief of Appellant, at 20. As a preliminary matter, it should be noted that the *only* reason that Ms. Hahn was able to ask the Department to recalculate her service credit is that, *as a part-time instructor*, she was a member of the certified class in Mader. The record contains substantial evidence that she was a part-time instructor, including her twenty-four part-time contracts, each of which indicate on their face that she would be placed on the Part-Time Salary Schedule. AR 150-177. Only part-time instructors were paid under the part-time salary schedule. AR 231.

During this period, Ms. Hahn was employed under a series of quarterly contracts, from fall quarter 1975 to summer quarter 1981.⁷ The contracts show that Ms. Hahn taught from two to six courses per quarter in the Developmental Studies Department. Accordingly, her contracts show her quarterly workload to range from 26 percent to 78 percent of a full-time load (full-time equivalency or FTE-F). CP 7, 13 (Final Order, FOFs 11 and 29). During no quarter do Ms. Hahn's contracts show an FTE-F of 100 percent, i.e., the equivalent of a full-time load.

B. From 1975 To 1981, The Bargaining Agreements Between Highline And Its Faculty Created Distinctions Between Full-Time Faculty And Part-Time Instructors, Relevant To The Teaching Assignments Of Each

1. The Workloads Of Full-Time Faculty Included Both Instructional And Non-Instructional Duties

Between 1975 and 1981, Highline and the Highline College Education Association (HCEA) had collective bargaining agreements in place, governing the terms of employment for the college's faculty. Pursuant to the terms of the bargaining agreements, the college employed both full-time faculty and part-time instructors. Full-time faculty members were hired under annual contracts. CP 11 (Final Order, FOF 23, note 9). With few exceptions, a full-time faculty member under an annual contract was required to teach during Fall, Winter, and Spring quarters. CP 7 (Final Order, FOF 12); AR 212. During the years in question, Fall, Winter, and Spring quarters contained a total of 170 working days, and

⁷ These contracts are contained in the certified administrative record at AR 150-177. See also CP 11-13 (Final Order, FOFs 24, 26, and 27).

full-time faculty members were therefore deemed to have been “in service” for 170 days under their annual contracts. CP 11 (Final Order, FOF 23, note 9).

Under the annual contract, the full-time faculty member was expected *both* to teach classes and to perform other duties in support of the mission of the college, including, but not limited to committee work, governance activities, and administration. AR 607-8. The mix of instructional and non-instructional duties required of each full-time faculty member was set by the college. AR 233-34.

Thus, each quarter a full-time faculty member was assigned to teach a certain number of classes. Within the discretion of the division head and College’s Dean of Instruction, the number of classes taught by a full-time instructor (i) could vary from one quarter to the next, depending on the instructor’s non-instructional assignments for the quarter; and (ii) could vary from the number taught by other full-time instructors in the same discipline. CP 21 (Final Order, COL 26).⁸

2. The Workloads Of Part-Time Instructors Included Instructional Duties Only

In addition to its full-time faculty, Highline employed part-time instructors on a quarter-to-quarter basis. Unlike full-time faculty, part-

⁸ For the first time in 1981, the ’81-’83 bargaining agreement specified a range for the *instructional* hours that the full-time faculty member was expected to teach over the course of a year. CP 10 (Final Order, FOF 21). The balance of the faculty member’s full-time load continued to be comprised of non-instructional duties.

Ms. Hahn has attached considerable significance to the ’81-’83 bargaining agreement in her briefing. It is important to note that this agreement applies to academic years occurring *after* the academic years in question in this appeal. Accordingly, it has minimal relevance in this appeal.

time instructors were hired to teach specific classes and were not expected to perform additional duties not directly related to the teaching of their classes. Thus, part-time instructors were required to plan and prepare for their classes, hold office hours to meet with students, and evaluate student performance. CP 10 (Final Order, FOF 22). However, they were *not* required to participate in general committee work, governance activities, or administration.⁹ AR 608.

The contract template for part-time instructors was distinct from that used for full-time faculty members. See, e.g., Attachment E (AR 155). Unlike the annual contract for full-time faculty, the body of the part-time contract listed the exact classes that the instructor was contracted to teach, including the total hours required, an hourly rate of pay, and a salary amount. CP 10-11 (Final Order, FOFs 22-23). The contract also contained a blank, labeled FTE-F, in which the college was required to indicate the percentage of a full-time load that the part-time instructor had been contracted to teach.¹⁰ CP 13 (Final Order, FOF 29).

⁹ On rare occasions, the part-time instructor might have additional responsibilities. Such responsibilities were specifically enumerated in the instructor's part-time contract. See, e.g., AR 206.

¹⁰ The FTE-F attached to any given course offered by the college became part of a course description maintained in Highline's Course Master File. Each time that a new course was offered, Highline sent the course description, including its FTE-F, to the State Board of Community and Technical Colleges (State Board) for approval. CP 11 (Final Order, FOF 24).

The FTE-F number had various uses, including but not limited to determining the eligibility of the part-instructor for certain benefits. At the conclusion of the Mader lawsuit, the State Board's database containing these FTE-F percentages was reliably used as the basis for calculating relief owed to each instructor under the terms of the Settlement Agreement. AR 264, 272-74.

The part-time instructor's FTE-F for the quarter was determined on a class-by-class basis according to the college's established guidelines. The FTE-F for the quarter was the sum of the FTE-Fs of the various classes taught. Thus, if the instructor taught one class representing 33 percent of an FTE-F and another class representing 25 percent of an FTE-F, the instructor's FTE-F for the quarter was 58 percent.¹¹ AR 600.

In 1977, the Dean of Instruction at Highline circulated a reference document, titled *Highline Community College, FTE-F Definitions*, written to clarify the determination of the FTE-F to be assigned to a particular course. CP 8 (Final Order, FOF 14). The document provided that a full-time load for most instructors was either 165 *lecture* hours or 330 *laboratory* hours per quarter. However, the document further provided that

High School Completion, Continuing Education, Adult Basic Education, *Developmental Studies*, and Student Services *require contact hours of 330 per quarter for each FTE-F*

regardless whether those contact hours were designated on the contract as laboratory or lecture hours. Attachment C (AR 180) (emphasis added).¹²

The 1977 reference document contained a table from which the full-time equivalency for any given course could be determined, based on

¹¹ Unlike a full-time faculty member, a part-time instructor had no non-instructional duties that would have served to increase his FTE-F beyond the sum of his individual classes.

¹² This 1977 directive was consistent with the college's earlier Faculty Assignment Guideline in 1975, which indicated that a full-time load for High School Completion, Adult Basic Education, and other learning laboratory instruction required from 330 to 440 contact hours per quarter. CP 7, 20 (Final Order, FOF 13; COL 22).

the number of lab and lecture hours required in the course.¹³ Id. The scale along the vertical axis of the table was to be used to determine the FTE-F for a particular laboratory course or any other course in which a full-time load required 330 contact hours per quarter.¹⁴ AR 603. Because a full-time load in the Developmental Studies Department was defined in the document to require 330 contact hours, the vertical axis was appropriately used to determine the full-time equivalency of an individual course in that department. Thus, a Developmental Studies course that required 44 contact hours was defined by the document to be 13 percent of a full-time load.¹⁵

The part-time instructor's FTE-F (i.e., the sum of the FTE-Fs of the classes for which he was contracted) was written on the face of the part-time contract. CP 13 (Final Order, FOF 29). In some cases the FTE-F was written on the contract before a copy was sent to the instructor; in other cases, the FTE-F was written on the contract after a copy had been sent to the instructor, but before the contract was filed in the instructor's personnel file.¹⁶ Id.

¹³ A course may consist (i) exclusively of laboratory hours; (ii) exclusively of lecture hours; or (iii) of a combination of laboratory and lecture hours. CP 8 (Final Order, FOF 14).

¹⁴ For example, if a full-time load in a particular discipline was 330 contact hours, one would expect a 44-contact-hour course in that discipline to be 44/300 or 13 percent of a full-time equivalency. By using the vertical scale of the chart, the reader can confirm that a 44-contact-hour course is 13 percent FTE-F. Attachment C (circled area "I").

¹⁵ Attachment F is Ms. Hahn's contract for winter quarter '80. Under the contract Ms. Hahn taught one Developmental Studies course at 13 percent FTE-F.

¹⁶ The Presiding Officer found these FTE-F numbers reliable, notwithstanding the fact that, on occasion, the number was placed on the contract after a personal copy had been sent to the instructor. CP 22 (Final Order, COL 31).

C. Pursuant To The Mader Settlement, Ms. Hahn Was Enrolled In The Teachers' Retirement System, Retroactive To September 1975, And Awarded 3.33 Years Of Service Credit

During her employment at Highline College, Ms. Hahn was not enrolled in the Teachers' Retirement System. After the settlement of the Mader lawsuit in 2002, Ms. Hahn applied to the Department, seeking a determination that she was eligible for membership and service credit in TRS Plan 1 for her Highline employment between 1975 and 1981.

1. As Required By Mader, The Department Applied WAC 415-112-335 To Determine Ms. Hahn's Days Of Service At Highline From 1975 Through 1981¹⁷

To calculate service credit in TRS Plan 1, the Department must first determine the *number of days* a teacher has worked. RCW 41.32.270; WAC 415-112-260, -330, and -335. Consistent with the Mader Court's ruling on summary judgment, the days worked by a part-time community college instructor can only be determined through the three-step process set out in WAC 415-112-335.

In the first step of the three-step process, the Department must determine the total number of official working days in each of the calendar months during which the instructor performed any service. WAC 415-112-335(1)(a). Highline's Payroll and Benefits Manager provided the Department precise data regarding the number of working days in each of the relevant months, based on the college's adopted

¹⁷ Because the application of the Department's statute and rule is complex, the process the Department used is explained here in some depth, *strictly as a statement of fact*. (Unfortunately, this case cannot be understood without this painstaking attention to numerical detail.) The *legal correctness* of the process is explained in the Argument section of this brief.

academic calendars.¹⁸ These numbers were adopted by the Department and placed into a spreadsheet for use in further computations. Attachment B (AR 136-37, second column).

In the second step of the process, the Department must determine the part-time instructor's "part-time workload." The "part-time workload" of a part-time community college instructor is the ratio of the part-time employee's "in-class teaching hours" to the "in-class teaching hours" required for a full-time load in that employee's discipline. WAC 415-112-335(1)(b).

The Payroll and Benefits Manager at Highline determined that the FTE-F percentage on each of Ms. Hahn's part-time quarterly contracts was an accurate representation of Ms. Hahn's part-time workload during that quarter, and the Department concurred. Accordingly, the FTE-F percentage from each of Ms. Hahn's contracts was entered as her "part-time workload" in the Department's spreadsheet for each month to which the percentage applied. Attachment B (third column). For example, the FTE-F on Ms. Hahn's quarterly contract for Fall 1976 shows that her part-time workload during that quarter was 65 percent.¹⁹ AR 154. Fall quarter 1976 included September, October, November, and December 1976.

¹⁸ After the Mader settlement, Highline's Payroll and Benefits Manager created a template containing the number of working days during each month from 1975 to 2003. To create this template, the manager cross-referenced the college's adopted academic calendars with the standard twelve-month calendar for the relevant year and counted the work days. AR 620-24.

¹⁹ The 65 percent FTE-F on this contract is consistent with the 1977 definitional guidelines, which defined one class in the Developmental Studies Department to be 13 percent FTE-F. During Fall 1976, Ms. Hahn taught five Developmental Studies classes. $5 \times 13\% = 65\%$.

Thus, the spreadsheet shows that Ms. Hahn's part-time workload during each of these months was 65 percent of a full-time load. Attachment B (circled area "I.").

In the third step of the process, the Department must multiply the number of working days in each month by the academic employee's part-time workload for that month to obtain the number of days the individual employee worked during the month in question. Attachment B (fourth column). For example, the number of days that Ms. Hahn actually worked during October 1975 is the product of the working days in October (23) and her part-time workload (78 percent) or 17.94 days. Attachment B (circled area "II."). Consistent with WAC 415-112-335(1)(c), the Department computed the number of days that Ms. Hahn worked during each calendar month. CP 14, 23 (Final Order, FOF 34, COL 33).

2. The Department Converted Ms. Hahn's Days Of Service Into 3.33 Years Of Service Credit²⁰

Consistent with RCW 41.32.270, to award service credit, the Department looks at the amount of service a teacher performs over fiscal year periods. CP 15-18 (Final Order, COLs 5-6, 11). In TRS Plan 1, a fiscal year is the twelve month period from July 1 through June 30. RCW 41.32.010(12). The fifth column of Attachment B shows the days Ms. Hahn worked grouped and totaled by fiscal year. For example, during

²⁰ Because the details of the application of the statute and rule are at issue, the process the Department used is explained here in some depth, *strictly as a statement of fact*. The *legal correctness* of the process is explained in the Argument section of this brief.

the fiscal year beginning July 1, 1976, and ending June 30, 1977, Ms. Hahn worked 101.92 days. Attachment B (circled area “III.”).

Under RCW 41.32.270 and WAC 415-112-330, if, during a particular “fiscal year,” a community college instructor works more than four-fifths of the number of days in the college’s “official school year,” he earns a full year of service credit. If, during a particular fiscal year, the instructor works less than four-fifths of the days in an official school year, the days worked are converted into a fractional service credit: the numerator is the days worked during the fiscal year; the denominator is the number of days in the institution’s official school year. CP 16-18, 23 (Final Order, COLs 7-8, 11, and 34).

From 1975 to 1981, the “official school year” of Highline College contained 170 days;²¹ four-fifths of the official school year was 136 days. CP 14, 16 (Final Order, FOF 35, COL 7). In no fiscal year did Ms. Hahn work 136 days or more. Attachment B. Thus, RCW 41.32.270 requires that she receive a fractional service credit for each of these years. CP 16 (Final Order, COL 8).

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²¹ At Highline College, the “official school year” included Fall, Winter, and Spring quarters, i.e., the quarters spanned by an annual contract for a full-time faculty member. AR 249-50, 565.

The fractional amounts are shown as decimals in this table:

| Fiscal Year | Days Worked | Service Credit (years) |
|--------------------|--------------------|-----------------------------------|
| '75-'76 | 93.99 | .55 ²² |
| '76-'77 | 101.92 | .60 |
| '77-'78 | 66.69 | .39 |
| '78-'79 | 74.62 | .44 |
| '79-'80 | 117.46 | .69 |
| '80-'81 | 111.92 | .66 |
| Total | | 3.33 |

Thus, during the six fiscal years in question, Ms. Hahn earned a total of .33 years of service credit.²³

V. COUNTERSTATEMENT OF THE ISSUE

The sole issue in this appeal is whether Ms. Hahn is entitled to exactly 3.33 years of service credit in TRS Plan 1 for her work at Highline College from September 1975 through August 1981. This issue contains four sub-issues as follows:

First. As a matter of law, did the Department correctly decide to use RCW 41.32.270 and WAC 415-112-335 as the basis for the calculation of Ms. Hahn's service credit?

²² The service credit is calculated as follows: $93.99/170 = .55$

²³ The Department determined that Ms. Hahn was not entitled to service credit for her service at Highline during July and August 1981 (the first two months of the '81-'82 fiscal year). Under RCW 41.32.270, a teacher may not earn more than one service credit during any given fiscal year. The Department's records showed that Ms. Hahn had earned a full year service credit at Highline College during the '81-'82 fiscal year *under an annual contract*. Thus, her service under her part-time contract during July and August could not be used to increase her service credit for this fiscal year beyond the one-year statutory maximum. CP 6, 14 (Final Order, FOFs 8, 35).

Second. As a factual matter, do the FTE-F numbers on Ms. Hahn's contracts accurately represent her full-time equivalency at Highline College?

Third. As a matter of law, did the Department correctly use the FTE-F numbers on Ms. Hahn's contracts to represent her "part-time workload" within the meaning of WAC 415-112-335 (for purposes of calculating Ms. Hahn's days of service)?

Fourth. As a matter of law, did the Department correctly compute Ms. Hahn's service credit in TRS Plan 1 within the meaning of RCW 41.32.270 (based on her days of service as calculated under WAC 415-112-335)?

VI. ARGUMENT

A. **Standard Of Review: Ms. Hahn Has The Burden To Establish The Invalidity Of The Department's Final Order**

This matter comes before the Court on judicial review. Judicial review of an agency's final order is governed by chapter 34.05 RCW, the Washington Administrative Procedure Act (APA). RCW 34.05.510. Under the APA, the petitioner has the burden to establish that the agency's final order is *invalid*. RCW 34.05.570(1)(a).

"The validity of agency action shall be determined in accordance with the standards of review provided in [the APA]" RCW 34.05.570(1)(b). In reviewing an agency order arising out of an adjudicative proceeding, the court shall grant relief *only if* it determines that one or more of the enumerated statutory bases for relief are

established. See Heidgerken v. Dep't of Natural Res., 99 Wn. App. 380, 384, 993 P.2d 934 (2000). The APA provides in relevant part,

The Court shall grant relief from an agency order in an adjudicative proceeding only if it determines that: . . .

- (d) The agency has erroneously interpreted or applied the law;
- (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, . . . ; [or]
- (i) The order is arbitrary or capricious.

RCW 34.05.570(3).

1. This Court's Review Of The Department's Findings Of Fact Is Governed By The Substantial Evidence Standard

When questions of fact are raised on judicial review, the challenging party has the burden of establishing that the facts are not supported by substantial evidence. RCW 34.05.570(3)(e). Under the “substantial evidence” test, an agency’s finding of fact must be upheld if there is evidence in the record in “sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” Heinmiller v. Dep’t of Health, 127 Wn.2d 595, 607, 903 P.2d 433 (1995).

This is so even if the reviewing court would form a different conclusion from its own reading of the record. Callecod v. Washington State Patrol, 84 Wn. App. 663, 676, 929 P.2d 510, review denied, 132 Wn.2d 1004 (1997). The reviewing court will not weigh the evidence or substitute its view of the facts for that of the agency. Nghiem v. State, 73 Wn. App. 405, 869 P.2d 1086 (1994). Indeed, “review is deferential and

entails acceptance of the factfinder's views regarding the credibility of witnesses and weight to be given reasonable but competing inferences." Callecod, 84 Wn. App. at 676. Where there is conflicting evidence, the court will "view the evidence and any reasonable inferences in the light most favorable to the party that prevailed in the highest forum exercising factfinding authority." Shofield v. Spokane Cy., 96 Wn. App. 581, 980 P.2d 277 (1999).²⁴

2. This Court's Review Of The Department's Legal Conclusions Is Governed By The Error-of-Law Standard

When the petitioning party has challenged an agency's conclusions of law or otherwise raised a question of law under RCW 34.05.570(3)(d), the error-of-law standard applies. The Court must review the law de novo and apply it to the facts in the record. The Court may substitute its judgment for that of the agency only if the agency's interpretation or statement of the law is incorrect. Franklin Cy. v. Sellers, 97 Wn.2d 317, 325, 646 P.2d 113 (1982).

Although issues of law are clearly within the court's province to decide, courts accord substantial weight to an agency's interpretation when an agency is interpreting the law it administers. Renton Educ. Ass'n v. Public Empl. Relations Comm'n, 101 Wn.2d 435, 441, 680 P.2d 40 (1984); Dana's Housekeeping v. Dep't of Labor & Indus., 76 Wn. App. 600, 605, 886 P.2d 1147 (1995). This is especially true, where, as here,

²⁴ In this instance, the Department's Final Order was entered by the Presiding Officer, who had conducted the administrative hearing.

the agency has expertise in a special field of law. Chancellor v. Dep't of Retirement Sys., 103 Wn. App. 336, 343, 12 P.3d 164 (2000); Grabicki v. Dep't of Retirement Sys., 81 Wn. App. 745, 752, 916 P.2d 452 (1996).

3. This Court's Review Of The Department's Discretionary Actions Is Governed By The Arbitrary And Capricious Standard

The power of the Legislature to grant discretionary authority to administrative agencies is well accepted. In Barry & Barry v. Dep't of Motor Veh., 81 Wn.2d 155, 500 P.2d 540 (1972), the Supreme Court found that such delegation was not only permissible, but desirable to meet the demands of modern government. Barry, 81 Wn.2d at 159.

The courts may grant relief if discretionary agency action is "arbitrary and capricious." However, administrative action is not arbitrary and capricious unless it is willful, unreasoning, and taken without regard to the attending facts and circumstances. Heinmiller v. Dep't of Health, 127 Wn.2d 595, 596, 903 P.2d 433 (1995). In judicial review, "[the court] will not set aside a discretionary decision absent a clear showing of abuse." ARCO v. Utils. & Transp. Comm'n, 125 Wn.2d 805, 812, 888 P.2d 728 (1995) (citing Jensen v. Dep't of Ecology, 102 Wn.2d 109, 685 P.2d 1068 (1984)). For a court to reverse a discretionary decision, "it must find that the decision was manifestly unreasonable," "exercised on untenable grounds or for untenable reasons." Hadley v. Dep't of Labor & Indus., 116 Wn.2d 897, 906, 810 P.2d 500 (1991); Wilson v. Board of Governors, 90 Wn.2d 649, 656, 585 P.2d 136 (1978), cert. denied, 440 U.S. 960 (1979).

Ms. Hahn appears to be making two arguments in this appeal. First, in effect, she has argued that it is not necessary to use the exacting numerical analysis required by WAC 415-112-335, when a less rigorous approach would result in a greater amount of service credit. In the alternative, she appears to argue that if WAC 415-112-335 *is* used to compute her days of service, the FTE-F numbers on the face of her part-time contracts cannot be used as her “part-time workload” for purposes of the calculation. Each of these arguments is addressed in turn.

B. There Can Be No Alternative To The Rigorous Numerical Analysis Required By RCW 41.32.270 And WAC 415-112-335

Ms. Hahn is a member of TRS Plan 1. Her service credit in TRS Plan 1 is therefore governed by RCW 41.32.270 and WAC 415-112-260, -330, and -335. CP 5-6, 15-18 (Final Order, FOFs 5-7; COLs 5, 11). Although Ms. Hahn has acknowledged that WAC 415-112-335 must be used in the calculation of her TRS Plan 1 service credit, at no stage of this proceeding has she even attempted to demonstrate that the rigorous month-by-month analysis required by the rule yields a number of days of service (for each of the months in question) different from the number of days computed by the Department. See Brief of Appellant, at 14-15.

Rather, she has offered an alternate methodology for the determination of service credit that by-passes entirely any calculation of her days of service for each of the months in question. Brief of Appellant, at 18-20. To justify her divergence from the approach set out by statute

and rule, Ms. Hahn has argued that a more liberal construction of the law must be used. Brief of Appellant, at 11. This argument must fail.

From time to time, the appellate courts have indicated that pension legislation should be “liberally construed” in favor of plan members and their beneficiaries.²⁵ Of course, use of a maxim of statutory construction presupposes an ambiguous statute and a *need* for statutory construction.²⁶ The principle of “liberal construction” does not stand for the proposition that the Department must abandon its interpretation of an *unambiguous* statute whenever a member proposes an alternative interpretation (ungrounded in statute) that would yield a higher benefit.

The questions raised in the present case do not involve statutory construction. WAC 415-112-335 unambiguously states that TRS Plan 1 service credit is based on a part-time instructor’s days of service and that the number of days of service must be determined through application of the rule. The Mader court unambiguously stated that the 1997 rule must be applied retroactively to at least 1977 to calculate the service credit of part-time instructors. CP 5 (Final Order, FOF 5).

²⁵ See, e.g., Grabicki v. Dep’t of Retirement Sys., 81 Wn. App. 745, 916 P.2d 452 (1996); Chancellor v. Dep’t of Retirement Sys., 103 Wn. App. 336, 12 P.3d 164 (2000).

²⁶ Further, the maxim of “liberal construction” is only used as a maxim of “last resort.” As this Court explained in Shurtliff v. Dep’t of Retirement Sys., 103 Wn. App. 815, 825, 15 P.3d 164 (2000):

[t]o resolve ... ambiguity, we look to the legislature’s intent. We do that by construing each statute in light of the entire statutory scheme, in the manner that best advances the legislature’s purpose, and, *if otherwise in doubt*, liberally in favor of the ... member.” (emphasis added).

Accordingly, Ms. Hahn's plea for a more liberal construction must be rejected. Because statutory construction is not required in the first instance, the maxim of "liberal" construction has no application. Thus, the alternate approach to the calculation of service credit urged by Ms. Hahn cannot be substituted for the rigorous three-step approach required by WAC 415-112-335 under the rubric of "liberal construction."²⁷ The Department applied the correct law with the exactitude required.

C. The FTE-F Numbers On Ms. Hahn's Contracts Accurately Represent Her Full-Time Equivalency For The Quarters In Question

Ms. Hahn's second argument is that if WAC 415-112-335 is used to compute her days of service (rather than her alternate methodology), the FTE-F values on her quarterly contracts cannot be used as the values for her "part-time workload" required in WAC 415-112-335(1)(b).²⁸ As a conceptual matter, Ms. Hahn does not appear to dispute that the FTE-F numbers (if correct) could be an appropriate surrogate for the "part-time workload" required by the rule. However, as a factual matter, she contends that the FTE-F numbers on her contracts are incorrect.

²⁷ Significantly, Ms. Hahn has received "liberal treatment" in several regards.

(i) Pursuant to the Mader settlement, Ms Hahn (as a part-time community college instructor) has now been given credit for all out-of-class hours in the computation of her service credit.

(ii) Though not required to do so by the Mader summary judgment, the Department decided that it would use WAC 415-112-335 to give part-time instructors credit for their out-of-class hours even for periods of instruction prior to 1977.

(iii) Shortly after the Mader settlement, the Department began to ask community colleges for the exact number of days in their official school years, rather than use a default of 180 days, thereby raising the fractions of service credit earned for partial years.

²⁸ In her brief to the trial court, Ms. Hahn arbitrarily inserted 100 percent as her part-time work-load, even for quarters during which she taught one class. CP 61.

Pursuant to the bargaining agreements, the FTE-F number on a quarterly contract is the ratio of the “contact hours” of the individual instructor to the “contact hours” in a full-time load as follows:²⁹

$$\frac{\text{contact hours of part-time instructor}}{\text{contact hours in full-time load}}$$

To derive the FTE-F numbers on Ms. Hahn’s quarterly contracts, the college used (i) the contact hours on the face of each of her quarterly contracts as the numerator of the fraction; and (ii) 330 as the denominator.

Ms. Hahn appears to agree that the numerator (i.e., the contact hours for each of her courses) has been stated correctly on each of her quarterly contracts. However, she disputes the denominator; that is, she disputes that the number of contact hours in a full-time load in the Developmental Studies Department was 330 hours per quarter during the period in question. Instead, she argues that a full-time load is 660 contact hours per year. Brief of Appellant, at 17-18.³⁰ Her argument fails for the reasons that follow.

1. Highline’s Official Business Records *Defined* A Full-Time Load In The Developmental Studies Department To Be 330 Contact Hours Per Quarter

Highline’s 1977 *FTE-F Definition*, currently on file in the College’s Academic Office, expressly *defined* a full-time load in the Developmental Studies Department to be 330 contact hours per quarter:

²⁹ “[C]ontact hours” are “the actual hours a[n] . . . instructor meets with the students in a classroom lecture or laboratory setting.” CP 8, 10 (Final Order, FOFs 15, 22).

³⁰ Because a full-time faculty member is expected to teach three quarters, 660 contact hours per year would average to 220 contact hours per quarter.

High School Completion, Continuing Education, Adult Basic Education, *Developmental Studies*, and Student Services require *contact hours of 330 per quarter* for each FTE-F ...

CP 8, 20 (Final Order, FOF 14; COLs 22-23); Attachment C (emphasis added). Ms. Hahn has objected to the Department's use of this 1977 definitional document to support its finding that a full-time workload in the Developmental Studies Department was 330 contact hours, claiming:

- (i) the document was inadmissible in the administrative proceeding because it is hearsay;
- (ii) even if the document was admissible, the Department's finding must be rejected because it was based exclusively on hearsay.

Brief of Appellant, at 21-25.³¹ Both claims must be rejected for the reasons that follow.

First, the document is not hearsay. Hearsay is a statement of an out-of-court declarant, offered for the "truth of the matter asserted." ER 801(c). The 1977 definitional guidelines were not offered to prove the "truth of the matter asserted" therein. Rather, the document was offered because it itself had operative legal effect.³² Through this document, issued by the college's dean of instruction, Highline took action to define a

³¹ Ms. Hahn has also claimed that a 1975 document on file in the Academic Office is inadmissible hearsay. This Court must reject this claim for the same reasons that it must reject Ms. Hahn's claim regarding the 1977 document.

³² "Statements . . . that have *independent legal significance* are not hearsay." For example, none of the following is hearsay: testimony of an oral consent to the assignment of a lease (if consent is an issue); statements to show the making of a gift; statements to show the formation of a contract; statements that rescind a contract; statements constituting harassment; allegedly defamatory statements (in defamation case); statements evidencing malpractice (in professional malpractice action); threatening statements (in prosecution for threatening a judge). 5B Karl B. Teglund, Washington Practice § 801.10 (4th ed. 1999).

full-time workload in the Developmental Studies Department, as a necessary prerequisite to be used in determining the full-time equivalency of courses offered within that discipline.

Second, even if the document contains hearsay (which the Department does not concede), under RCW 34.05.452(1) hearsay evidence is admissible in adjudications under the Administrative Procedure Act if it is the “kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.” Because this appeal was brought more than 25 years after the period in question, this official business document, prepared contemporaneously with the events in question, provides better evidence than Ms. Hahn’s self-interested recollection regarding the definition of a full-time workload during this period. A reasonable person would prudently rely on the objectivity of the business document to find (i) that Highline defined a full-time load in the Developmental Studies Department to be 330 contact hours per quarter; and (ii) that a full time load was 330 contact hours *precisely because* the college, within its discretion, defined it as such.³³

Third, contrary to Ms. Hahn’s assertion, the Department did not rely exclusively on the 1977 definitional document in reaching its findings. Ms. Hahn’s quarterly contracts (which she herself offered into evidence) clearly corroborate that Highline defined and used 330 contact

³³ Further, the document falls within three exceptions to hearsay rule--the business record exception, ER 803(a)(6); the public records exception, ER 803(a)(8); and the ancient document exception, ER 803(a)(16). Thus, under the Rules of Evidence, the document would be admissible in a court of law. See AR 588-91.

hours as a full-time load during this period. For example, if a contract shows that a teacher taught 44 contact hours for an FTE-F of 13 percent during a particular quarter, straight-forward arithmetic can be used to show that 44 has been compared to 330 to derive the FTE-F of 13 percent.³⁴

In short, the Department had substantial evidence to support its findings regarding Highline's *definition* of a full-time load during the period in question.

2. The Instructional Load Of The Developmental Studies Coordinator Is Not Determinative Of A Full Load For Part-Time Instructors

Ms. Hahn's second argument is that, to the extent Highline did define a full load in the Developmental Studies Department to be 330 contact hours per quarter, that definition was, in effect, a subterfuge, intended to deprive part-time instructors from receiving retirement benefits. Brief of Appellant, at 19, 25. She claims that although the definitional documents *purport* to reflect a full load, in practice a full load was considerably less. This lesser value, she claims, should be used in the denominator of the fraction through which her FTE-F was computed.

Ms. Hahn has cited the instructional load of her division coordinator as proof that the full-time load of a Developmental Studies instructor was factually "closer to" 660 hours per year (i.e., 220 hours per

³⁴ The analysis is as follows. Let y be the number of hours in a full time load. $44/y = .13$. Therefore $y = 44/.13 = 338$. (This is slightly greater than 330 because of round-off error.)

quarter) during the period in question. Brief of Appellant, at 17-18. This argument is problematic for at least two reasons. First is the accuracy of Ms. Hahn's self-interested recollection (i) almost *thirty years* after the events in question, (ii) regarding the teaching load of *another person* (iii) for *each* of twenty-four *distinct* quarters. CP 21 (Final Order, COL 25).

Second, even if Ms. Hahn's recollection were correct (which the Department does not concede), the instructional workload of the Developmental Studies division coordinator cannot be deemed to be determinative of the full load required of part-time instructors. In this case, one might reasonably expect that the coordinator had a reduced class load to offset a significant number of non-instructional responsibilities. CP 21 (Final Order, COL 26). In a department with only one full-time faculty and numerous part-time instructors, the administrative responsibilities of overseeing work and ensuring that the department's instructional needs were covered from one quarter to the next would likely have been significant.

Indeed, there is *no* one individual full-time instructor whose class load can be held out as determinative of a "full-time instructional load." If we assume, for the sake of the argument only, that Ms. Hahn's division coordinator taught only four classes (176 contact hours³⁵) per quarter, it is also reasonable to assume that she had a significant number of non-instructional duties. If the division coordinator had been assigned six

³⁵ Ms. Hahn testified that four classes were the equivalent of 176 contact hours, i.e., 44 contact hours per course. CP 14-15 (Final Order, FOF 36).

classes (264 contact hours), she would likely have been assigned fewer non-instructional duties. If the division coordinator had been assigned seven classes (308 contact hours), likely her non-instructional duties would have been reduced yet further. In short, neither 176, 264, nor 308 contact hours can be deemed to be *the* instructional load of a full-time faculty member in the Developmental Studies Department.

However, in order to determine an FTE-F for purposes of a part-time contract, the college *must* identify a single number (a full-time instructional load) to which to compare the contact hours of the part-time instructor. In order to compare “apples to apples,” the college must identify the full time instructional load of a full-time faculty member who (like a part-time instructor) has *no* non-instructional duties. This is the number identified in the 1977 definitional document--330 contact hours per quarter.

Thus, Ms. Hahn’s testimony regarding her division coordinator proves nothing: it does not contradict and does not refute the Department’s finding that a full load for a part-time instructor in the Developmental Studies Department was 330 contact hours per quarter.

3. Conclusion

In conclusion, the FTE-F numbers on Ms. Hahn’s contracts are correct, and the Department’s finding to that effect is based on substantial evidence. Under the substantial evidence standard, the record must simply contain sufficient evidence on which a fair-minded decision maker may

draw a reasonable conclusion. Heinmiller, 127 Wn.2d at 607.³⁶ The 1977 *FTE-F Definition* memorandum, coupled with Ms. Hahn's quarterly contracts, are substantial evidence that Highline defined and used 330 contact hours per quarter as a full-time load in the Developmental Studies Department. After weighing Highline's official business records against Ms. Hahn's self-interested testimony, the Presiding Officer concluded that Ms. Hahn had not shown that the business records themselves were "unreliable in any respect." CP 21 (Final Order, COL 25). Nor was Ms. Hahn's testimony regarding her division coordinator relevant in any regard to prove that a full-time load instructional load (for purposes of the FTE-F ratio) was other than 330 contact hours.³⁷

D. The Department Correctly Applied WAC 415-112-335 To Calculate Ms. Hahn's Days Of Service As Prerequisite To The Calculation Of Her Service Credit

To calculate Ms. Hahn's TRS Plan 1 service credit, the Department must first establish the *number of days* Ms. Hahn worked from September 1975 through August 1981. WAC 415-112-335. Consistent with

³⁶ See also Shofield, 96 Wn. App. at 586 (the court must view the evidence and any reasonable inferences in the light most favorable to the party that prevailed in the highest forum exercising factfinding authority).

³⁷ Ms. Hahn has placed considerable importance on the fact that Highline's Payroll and Benefits Manager, Denise Kledzik, was not employed at the College between 1975 and 1981 and therefore "had no personal knowledge" of the requirements of a full-time instructional load in the Developmental Studies Department during that period. Brief of Appellant, at 19. However, Ms. Kledzik's testimony *was not offered* to prove that a full-time load was 330 contact hours per quarter. Rather, her testimony was offered to explain the College's business documents, based on her personal knowledge and understanding, developed during the course of her employment, regarding the significance of the information contained on part-time contracts. While Ms. Kledzik's testimony was properly admitted to assist the Presiding Officer in understanding the record, the underlying information can be ascertained from the face of the records themselves.

WAC 415-112-335, the number of days worked must be calculated on a month-by-month basis using a three-step process. Under the rule, Highline must:

- (1) Determine the number of working days in each month from September 1975 through August 1981, as defined by its adopted academic calendar;
- (2) Determine Ms. Hahn's part-time workload for each individual month; and
- (3) Multiply the number of working days in each month by the part-time workload for that month.

WAC 415-112-335(1). CP 18 (Final Order, COL 14). The product obtained in the third step is the number of days that the instructor worked during that month.³⁸

Ms. Hahn has not objected to Highline's determination of the number of working days in each of the months between September 1975 and August 1981 in step one. Nor can she object to the implementation of step three, the straight-forward multiplication of numbers determined in steps one and two. Ms. Hahn's sole objection to the Department's application of the rule is centered in the second step, the determination of her part-time workload. To the extent that her objection is grounded in the factual accuracy of the FTE-F numbers on her quarterly contracts, her concerns have been addressed above. To the extent that her objection is grounded in the legal propriety of using the FTE-F numbers on her

³⁸ Because the Department has the final authority for calculating service credit, the Department must be satisfied that the data and computations provided by the college are correct. CP 19 (Final Order, COL 19).

quarterly contracts as the part-time workloads required in step two of the rule, it is addressed here.

To apply the second step of the rule, the college must determine the part-time instructor's "part-time workload." The "part-time workload" is the ratio of the instructor's "in-class teaching hours" to the "in-class teaching hours" in a full-time load in that employee's discipline. WAC 415-112-335(1)(b). WAC 415-112-335 defines "in-class teaching hours" as

. . . contact classroom and lab hours in which . . . academic employees are performing contractually assigned teaching duties. The in-class teaching hours shall not include any duties performed in support of, or in addition to, those contractually assigned in-class teaching hours.

WAC 415-112-335(3).

Highline's Payroll and Benefits Manager determined (and the Department concurred) that the FTE-F numbers on a part-time instructor's quarterly contract contained exactly the data required by the rule. CP 22 (Final Order, COL 31). The FTE-Fs on part-time quarterly contracts are the ratio of the "contact hours" of a part-time instructor to the "contact hours" required of a full-time instructor in that employee's discipline at the college (expressed as a percentage). Attachment C. In turn, "contact hours" are

the actual hours a[n] ... instructor meets with the students in a classroom lecture or laboratory setting.

CP 8, 10-11 (Final Order, FOFs 15 and 22).

Thus, the terms “contact hour” and “in-class-teaching hour (ICTH)” are synonymous: they both include the hours that an instructor spends in contact with students in a classroom setting, either lecture or laboratory. Neither includes hours spent for extended planning and preparation, extended student evaluation, office hours and advising, administrative duties, or committee work. AR 205. If the terms are synonymous, the following ratios are necessarily equivalent:

$$\frac{\text{contact hrs of PT instructor}}{\text{contact hrs in FT load}} = \frac{\text{ICTHs of PT instructor}}{\text{ICTHs in FT load}}$$

CP 13-14 (Final Order, FOFs 32-33).

Accordingly, the FTE-F ratio (i.e., the ratio of contact hours) was correctly used in the second step of the rule as Ms. Hahn’s part-time workload (i.e., the ratio of in-class-teaching hours). The Department correctly applied the law by rigorously following the three-step process set out in WAC 415-112-335 to determine the number of days Ms. Hahn worked during each month of her employment at Highline.

E. The Department Correctly Computed Ms. Hahn’s Service Credit In TRS Plan 1 Using Her Days Of Service (As Calculated Under WAC 415-112-335)

RCW 41.32.270 provides the method for the determination of TRS Plan 1 service credit for full-time and part-time instructors alike. CP 15 (Final Order, COL 5). It provides,

Service rendered for four-fifths or more of the *official school year* of the . . . institution in which a teacher is employed, shall be credited as a year’s service regardless of the length of the school term, but in no case shall more than one year of service be creditable for service rendered in one *fiscal year*.

Service rendered for less than four-fifths of the *official school year* shall be credited for that portion of the school year for which it was rendered . . .

RCW 41.32.270 (emphasis added). The retirement statute defines the term “fiscal year” (i.e., “a year which begins on July 1st and ends June 30th of the following year”). RCW 41.32.010(12). However, neither the retirement statute nor the community college statute defines the term “official school year.” Ms. Hahn has argued that the Department does not correctly distinguish between a “fiscal year” and an “official school year” when it converts a member’s days of service into TRS Plan 1 service credit. Brief of Appellant, at 28-29.

1. The Department’s Interpretation Of RCW 41.32.270 Is Beyond The Scope Of This Proceeding

As a preliminary matter, it must be noted that Ms. Hahn has no standing to challenge the Department’s interpretation of RCW 41.32.270 in this proceeding. In the Mader class action, the State’s part-time community college instructors brought suit against the State, seeking increased retirement benefits for the period from 1977 through 1998. The plaintiffs advanced *numerous* theories to support their claim for increased benefits. The 2002 Settlement Agreement was intended to resolve, fully and finally, all these claims. Indeed, it provided,

[t]his Settlement Agreement completely resolves and settles the Plaintiffs’ claims, relating to their exclusion from specific retirement related benefits which may have arisen from October 1, 1977 to the present, as defined herein. . . .

All such claims . . . concerning the State’s alleged failure to correctly determine [sic] eligibility of part-time instructors

for retirement benefits . . . , *whether based on a tort, contract, constitutional, or statutory* . . . *theory of recovery* that is asserted or could have been asserted in this litigation are covered herein.

AR 266-67 (emphasis added).

Three categories of relief were provided by the Settlement Agreement: one of the categories was an adjustment in TRS service “according to the method set forth in WAC 415-112-335.”³⁹ CP 6 (Final Order, FOF 6, 7); AR 277. The “method set forth in WAC 415-112-335” is a method for the calculation of days of service. Thus, pursuant to the Settlement Agreement, TRS members were permitted to apply for an adjustment in their days of service *only*. The Settlement Agreement did not create standing for members to challenge or continue to litigate the interpretation of any other retirement statute affecting the calculation of their service credit. To the contrary, such challenges were expressly foreclosed by the terms of the settlement.

Pursuant to the Mader settlement, Ms. Hahn’s days of service at Highline College *have been* recalculated pursuant to WAC 415-112-335. She has no further standing in this proceeding to challenge how her days of service are converted into service credit under the Department’s interpretation of RCW 41.32.270.

³⁹ The other two categories of relief were payments to the named plaintiffs and payments to members of another retirement system (TIAA-CREF) in which the State participates. AR 270. Neither category is relevant to Ms. Hahn’s appeal.

2. Even If The Term “Official School Year” Were Interpreted As Ms. Hahn Has Suggested, She Would Earn 3.33 Years Of Service Credit

RCW 41.32.270 requires the Department to determine whether a TRS Plan 1 member has worked more or less than four-fifths of an “official school year” and to award service credit accordingly as follows:

- (i) if the teacher has worked $\frac{4}{5}$ or more of the *official school year*, the teacher receives one full service credit, regardless of the length of the school term;
- (ii) if the teacher has worked less than $\frac{4}{5}$ of the *official school year* (but more than 20 days in the school year), the teacher receives a fraction of one service credit for that portion of the school year for which service was rendered; and
- (iii) if the teacher has worked less than 20 days in a school year, the teacher receives no service credit for that service.

However, in no case may a teacher earn more than one full service credit in a *fiscal year*. RCW 41.32.270.

For reasons that will be explained more fully in the following section, the Department totals the number of days worked during each fiscal year in order to perform the “four-fifths test” described above. If, during the fiscal year period, the teacher has worked more than $\frac{4}{5}$ of the particular institution’s “official school year,” the teacher earns one service credit for the fiscal year. Otherwise, the teacher earns a fractional service credit for the fiscal year. Attachment G (double lines show Department’s fiscal year grouping).

Ms. Hahn has argued that the number of days worked must be grouped and totaled by the institution’s “official school year,” rather than

by fiscal year, before the four-fifths test is performed. Brief of Appellant, at 18, 29; Attachment G (single lines show Ms. Hahn's preferred grouping). Based on the notations in the upper right hand corners of her quarterly contracts, she has argued that Highline's "official school year" runs from Fall quarter through Summer quarter. Brief of Appellant, at 29.⁴⁰ See, e.g., Attachment D.

The fatal flaw with Ms. Hahn's argument is that it does not help her: even if days were grouped as she has suggested, her service credit would nonetheless total 3.33 years. Attachment G. In her brief, Ms. Hahn has used her preferred grouping method in conjunction with the rest of her "alternate methodology" (through which she by-passes the use of WAC 415-112-335) to derive 5.67 years of service credit. When WAC 415-112-335 is properly used to calculate Ms. Hahn's days worked, *and those days are grouped according to Ms. Hahn's own grouping method*, the result is 3.33 years of service credit. Because Ms. Hahn's grouping method has no effect on her service credit, this Court need not reach the question of whether the Department's interpretation of RCW 41.32.270 (the fiscal year grouping method) is a reasonable exercise of its discretion.

⁴⁰ Ms. Hahn's interpretation is not supported by Highline's official academic calendars, which run from Summer through Spring quarters, *not* from Fall through Summer quarters. CP 7 (Final Order, FOF 12); AR 144-49.

3. The Department's Definition of an Official School Year Is Reasonable

To the extent that this Court nonetheless reaches the Department's interpretation of RCW 41.32.270, it must affirm the Department's interpretation as a reasonable exercise of the Department's discretion.

RCW 41.32.270 provides that "[s]ervice rendered for four-fifths or more of the official school year of the . . . institution in which a teacher is employed, shall be credited as a year's service regardless of the length of the school term..." The Legislature delegated to the Department the authority and duty to supply the details necessary to implement the provisions of the TRS statute:

The department is empowered within the limits of [the TRS statute] . . . to decide on all questions of [membership] eligibility, service credit, and benefits.

RCW 41.32.025. See Barry & Barry v. Dep't of Motor Veh., 81 Wn.2d 155, 159, 500 P.2d 540 (1972) (delegation to an administrative body is desirable to meet the demands of modern government).

Because the term "official school year" is not defined in the TRS statute, the Department has the statutory duty to interpret the term reasonably. The Department's interpretation has been derived after full consideration of the unique circumstances of the diverse members TRS Plan 1, including, without limitation, teachers and administrators; part-time and full-time teachers; common school and community college teachers; teachers who work at one institution and teachers who work at multiple institutions.

Both the K-12 common schools and the community colleges have an approximately nine-month period (sometime between September and June) during which full-time teachers are employed under an annual contract. Full-time teachers in the common schools are contracted to teach a minimum of 180 days during this period; full-time faculty in the community colleges are generally contracted to teach somewhat less than 180 days, depending on the bargaining agreement governing their employment (during Fall, Winter, and Spring quarters). RCW 28A.405.210; RCW 28B.52.020(8).

Some full-time teachers perform additional service under contracts other than the annual contracts described above. For example, a full-time common school teacher may teach summer school either under a “supplemental contract” with the school district or under a part-time quarterly contract with a community college. RCW 28A.405.240. Similarly, a full-time community college instructor may teach summer school under a separate agreement with the college. See, e.g., AR 212, 218, and 225.

In light of these facts, the Department might reasonably have:

- (i) defined the term “official school year” to be the *calendar period* (between September and June) during which the required number of teaching days are performed under an annual contract, and
- (ii) applied the “four-fifths test” required by RCW 41.32.270 by comparing the number of days a teacher performed service *during this calendar period* (i.e., “official school year”) to the required number of teaching days.

If the Department had defined the term “official school year” as a particular calendar period (which it has not), it would have applied RCW 41.32.270 as follows. First, if a teacher taught *4/5 or more* of the institution’s required teaching days during the “official school year” (i.e., the calendar period running between September and June), the teacher would have received one full year of service credit. Consistent with the statute, the teacher would have received no additional service credit for any other service during the same *fiscal year*, i.e., July 1 through June 30.⁴¹

Second, if a teacher had taught *less* than *4/5* of the institution’s required teaching days during the “official school year,” the teacher would have received a fractional service credit for the service performed during the “official school year.” If the teacher had performed any additional service during the same fiscal year, the teacher would also have received fractional service credit for the additional service, up to a maximum of one full year of service credit. RCW 41.32.270.

This approach would have disadvantaged certain part-time teachers as illustrated in the following example. Assume a particular part-time community college instructor performed the service indicated below, teaching 96 days during the “official school year” and 40 days of summer school.

⁴¹ For example, if the teacher had performed additional service under a summer school contract either (i) from July 1 to opening of school in September, or (ii) from the close of school in June through June 30), the teacher would have received no additional service credit for this service.

| | Quarter | Month | Days/Mo | Total for Official School Year | Total for Fiscal Year |
|---------|---------|--------|---------|-----------------------------------|--------------------------|
| FY | | Jul-76 | 21 | | |
| '76-'77 | | Aug-76 | 10 | | |
| | Fall | Sep-76 | 2.60 | | |
| | | Oct-76 | 13.65 | | |
| | | Nov-76 | 12.35 | | |
| | | Dec-76 | 7.80 | | |
| | Winter | Jan-77 | 10.92 | | |
| | | Feb-77 | 10.40 | | |
| | | Mar-77 | 6.24 | | |
| | Spring | Mar-77 | 2.08 | | |
| | | Apr-77 | 10.92 | | |
| | | May-77 | 10.40 | | |
| | | Jun-77 | 8.66 | 96 | |
| | Summer | Jun-77 | 9 | | 136 |

Under the [rejected] definition of “official school year,” the part-time teacher would have received .80 service credit, calculated as follows:

| | |
|--|------------------------|
| Fractional service credit for “official school year” | $96/170 = .56$ |
| Fractional service credit for remainder of fiscal year | $40/170 = .24$ |
| Total | .80 s.c. ⁴² |

However, a full-time teacher who taught the same number of days *within* the official school year (Fall, Winter, and Spring quarters) would have earned one full service credit, because [s]he had taught “4/5 of more of the official school year (so defined).”

The Department did not adopt the foregoing interpretation of the term “official school year.” Rather, it adopted a more “liberal” interpretation that allowed part-time teachers to benefit from the “four-fifths rule,” as well. To do so, the Department defined the “official school

⁴² This hypothetical is based on an “official school year” containing 170 days.

year” simply to be the *number* of required teaching days for a full-time teacher at the institution in question, rather than as the *calendar period* containing the required teaching days. If, during the entire fiscal year, the teacher has performed service for 4/5 of the institution’s *required number of teaching days*, the teacher would earn a full service credit.

Under the Department’s adopted definition, the part-time teacher in the example above *would* have taught “4/5 of the official school year” and *would* have earned a full service credit (rather than .80 of a service credit.) The Department applied this more liberal interpretation when it converted Ms. Hahn’s days of service into service credit.

For a court to find a discretionary decision arbitrary and capricious, “it must find that the decision was manifestly unreasonable.” Hadley v. Dep’t of Labor & Indus., 116 Wn. 2d 897, 810 P.2d 500 (1991). In this case, the Department’s definition of an “official school year” was formulated with full consideration of all the facts surrounding employment in the State’s educational institutions, is reasonable, and must be accorded substantial deference. If this Court even reaches this issue, it should affirm the Department’s implementation of RCW 41.32.270.

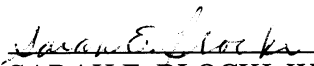
VII. CONCLUSION

In conclusion, the Department requests this Court to affirm its determination that Ms. Hahn’s service credit for the period in question has been correctly calculated to be 3.33 years. The Department’s determination is based on (i) substantial evidence that the FTE-F numbers on Ms. Hahn’s contracts accurately reflect her part-time workload at

Highline college; (ii) the correct and rigorous application of WAC 415-112-335 to compute her days of service; and (iii) a reasonable interpretation of the term “official school year” in the application of RCW 41.32.270. Ms. Hahn has not carried her burden under the APA to establish the invalidity of the Department’s determination.

RESPECTFULLY SUBMITTED this 11th day of September, 2006

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Attorney General



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Assistant Attorney General
Attorneys for Washington State
Department of Retirement Systems

ATTACHMENT A

I hereby certify that I have this day served a copy of this document upon the parties of record in this proceeding by mailing each of them a copy thereof, properly addressed and postage prepaid.

**Patti Lee, Administrative Assistant
Department of Retirement Systems
Olympia, Washington**

In re the Appeal of
ELLEN (SMITH) HAHN

FINAL ORDER

CP 4

FINDINGS OF FACT

1. The Washington State Department of Retirement Systems (DRS or the Department) is the agency charged with administration of the state retirement systems for public employees, including the Teachers' Retirement System (TRS), the statewide system for public school teachers.
2. The Teachers' Retirement System comprises three plans. Plan 1, the original plan, covers those public school teachers who established membership as of September 30, 1977. Plan 2 covers those who established their membership on October 1, 1977 or later. Plan 3 covers those who first become members of the system on or after July 1, 1996, or who voluntarily transfer to the plan.^{1,2}
3. Since 2003 Ellen Hahn (formerly Ellen Smith) has been a member of TRS Plan 1.³ Ms. Hahn had become a member of TRS Plan 2 by 1994;⁴ by 1998, she had transferred to TRS Plan 3. DRS transferred her membership to TRS Plan 1 after DRS entered into a 2002 settlement agreement that ended the litigation described below.

The Mader Lawsuit –DRS Settlement

4. In December 1998 a class of part-time community and technical college instructors, represented in part by named plaintiff Eva Mader, brought suit in King County Superior Court against the State of Washington, the State Board for Community and Technical Colleges, and DRS. They sought, among other things, a determination of eligibility for certain state retirement benefits.
5. The action was separated into two phases, liability and damages. In January 2000, in the liability phase, the court entered the following decision and order on summary judgment:

(1) WAC 415-112-335 contains the method of calculating the "equivalent" days and hours worked by part-time community and technical colleges for the purpose of retirement benefits for the time period from at least 1977 to the present;

(2) the Department of Retirement Systems (DRS) enacted WAC 415-112-

¹ RCW 41.32.010(38),(39),(40).

² Originally the plans were designated by Roman numerals, "Plan I," "Plan II," "Plan III." Effective September 1, 2000, the Legislature directed the Code Reviser to use Arabic numerals in place of the Roman. Laws 1998, Ch. 341, §§ 709, 714.

³ TR 41-42, 82

⁴ This record does not reveal with certainty when Ms. Hahn entered TRS Plan 2 membership. She testified without challenge that it was in the fall of 1994, TR 41, forming the basis for this finding. However, it is likely that she first entered TRS membership earlier. The Department's pre-hearing brief, at footnote 24, states that Ms. Hahn became a TRS Plan 2 member in September 1981; this is consistent with a 1993 ruling by the DRS Director that Ms. Hahn (then Smith) was required to be a member of TRS Plan 2 as of that month. *In re the Appeal of Ellen R. Smith*, DRS Docket No. 91-T-003 (March 12, 1993). Similarly, Exhibit 16, p. 2, shows that the Department granted Ms. Hahn a full year's credit for teaching service in TRS Plan 1 for each of the school years 1981-82 through 1984-85.

335 to clarify the existing law because colleges were misreporting the hours worked by part-time instructors by reporting to DRS only the part-time instructors' in-class teaching hours or "contact" hours;
(3) WAC 415-112-335 clarified the existing law and it is thus retroactive; and
(4) the express language of WAC 415-112-335 shows the method of calculating the days and hours worked by part-time instructors set forth in the regulation applies at least back to 1977. [all sic]

Exhibit 23, p. 3.

6. After this ruling, the parties drafted a Class Action Settlement Agreement (Agreement) for signature in May 2002. The Agreement took effect sometime later.⁵ The Agreement acknowledged the court's summary judgment ruling, and that TRS members' claims settled by the Agreement reached back to October 1977. It specifically provided that TRS members who wanted to establish additional service credit (and earlier membership) could apply to DRS for adjustments in service credit, and DRS would use WAC 415-112-335 to determine their service credit.⁶
7. In a later declaration in support of the Agreement, the senior assistant attorney general representing the Department told the court that the Department would apply WAC 415-112-335 to determine class members' service credit and membership eligibility in TRS, without a time limit, "if there is no other evidence establishing their actual hours of work for their employer." The declaration repeated that class members who wished to have part-time teaching service considered for TRS membership or additional service credit were to apply to the Department "in the ordinary manner" for review of their employment.⁷

Ms. Hahn's Appeal

8. Ms. Hahn, a TRS member and former part-time community college instructor, was a member of the plaintiff class.⁸ Following the lawsuit settlement, in February 2003 Ms. Hahn applied to DRS for membership in TRS Plan 1 beginning with September 1975, and for additional service credit in that plan. In March 2003, DRS agreed that Ms. Hahn qualified for membership in TRS Plan 1 effective September 1975. Exhibit 11. In April 2003, Ms. Hahn notified DRS of her desire to transfer to Plan 1. Exhibit 12. DRS transferred Ms. Hahn's TRS membership to Plan 1, effective September 1975. By October 2003, DRS had credited her with a full year's service in that plan for each of the academic years 1981-82 through 1984-85, and 1994-95 through 2002-03. Exhibit 16, p. 2.
9. Ms. Hahn's TRS Plan 1 service credit for the academic years 1975-76 through 1980-81 remained unsettled. DRS had first calculated her service credit for

⁵ The record copy of Exhibit 24 does not display signatures or a final date; par. 37 makes the Agreement effective at a future date, after legislative appropriation and approval by the court.

⁶ Exhibit 24, p.12, par. 44; pp.19-20, pars. 59-60.

⁷ Exhibit 25, p. 2, paragraph 2, p. 3, paragraph 7.

⁸ Ex. 24, p. 6, par.14.

1975 through 1981 at 3.14 years. Exhibit 11, p. 3. Ms. Hahn did not agree with this calculation, and sought six full years' credit for this period. Exhibit 13. In October 2003, DRS recomputed Ms. Hahn's service credit for 1975-1981. This recomputation reduced the count of total academic year work days from 180 to 170, to reflect her community college's official instructional calendar, and it increased the amount of Ms. Hahn's 1975-81 service credit to 3.33 years. Exhibits 3, 16. Ms. Hahn maintained that she was entitled to six full years' service credit for this time period, and petitioned for internal DRS review. The DRS petitions examiner concluded that her service credit for the period 1975-1981 was correctly calculated at 3.33 years. Jurisdictional Record.

10. Ms. Hahn requested a hearing before DRS. In her Notice of Appeal, Ms. Hahn maintained her entitlement to six full years of service credit. In her post-hearing brief, she revised her claim for the 1977-78 school year to .67 of a full year. This brought her total claim to 5.67 years of service credit rather than a full 6 years. The difference remaining between Ms. Hahn's claim and the credit granted by the Department is now 2.34 years.

Highline Community College and Ms. Hahn's Employment, 1975-81

11. Ellen Smith Hahn (then Ellen Smith) began teaching at Highline Community College (HCC, or the College) in the Fall quarter of 1975. She taught between 2 and 6 courses at HCC in each academic quarter from September 1975 through August 1981.
12. Each quarter comprises 11 weeks of instruction. The academic quarters for the years at issue followed this pattern: Summer quarter, June (3rd week) into July, August or September, depending on the session; Fall quarter, September into December; Winter quarter, January into March; Spring quarter, March into early June. Exhibit 5. An academic year for full-time community college instructors is normally three consecutive quarters, Fall through Spring.

HCC guidelines

13. In 1975, the College had a written guideline for full-time faculty assignments. The *Faculty Assignment Guideline*, Exhibit 7, set out the "instructional assignment" or "scheduled assignment" expected of full-time instructional and library employees. On page 1, the *Guideline* table for different departments shows 15 contact hours per week (the equivalent of 165 contact hours in an 11-week quarter) was the general expectation for instructors, though laboratory and studio work required more contact hours (20-22 per week), as did physical education activities (22-24). Ms. Hahn's testimony confirmed this general expectation. In the *Guideline*, full-time High School Completion and Adult Basic Education instruction required more contact hours, 330 to 440 contact hours per quarter (the equivalent of 30 to 40 contact hours per week in an 11-week quarter). 30 hours per week also was considered full-time for learning laboratory assignments.

14. In or about 1977, the College's administration had expanded to include a Dean of Instruction, Dr. Robert McFarland. Compare Exhibit 5, p.2. with Exhibit 5, p. 4; see also Exhibit 29. Effective September 7, 1977, Dr. McFarland approved a reference document for determining what constituted full-time faculty employment with HCC, which varied according to type of class and class enrollment limits. Exhibit 8. Pertinent portions of this document stated:

The following reflects Highline Community College practices in defining full-time equivalent faculty load:

The basic load for most college courses follows this chart: [Chart 1] ... A full load as defined by contact hours is 165 per quarter (15 per week for 11 weeks) of lecture activities or 330 per quarter (30 per week) of laboratory activities.

3. Exceptions:

High School Completion, Continuing Education Adult Basic Education, Developmental Studies and Student Services require contact hours of 330 per quarter for each FTE-F. The class limit for these classes may be reduced ...

Chart 1 provided a means for determining what percentage of a full-time teaching load a particular course represented. The chart was consistent with the statements above, in that full-time status required twice as many laboratory hours as lecture hours. The chart expanded on this basic principle, assigning percentage values by comparing laboratory and lecture hours required for teaching any particular course.

15. HCC distinguished between the hours an instructor would be expected to spend in the classroom teaching (laboratory and lecture hours) and the time an instructor would be expected to spend on duties other than classroom teaching. HCC's policies used the term "contact hours" for the classroom teaching hours. HCC expected a full-time instructor to work an average of 7 hours per day or 35 hours per week, but only 15 contact hours per week. The difference between the expected weekly contact hours and the expected weekly work hours roughly represents non-instructional time for duties such as student advising, office hours, and committee work.

The HCEA Agreements

16. During the academic years 1975-76 through 1980-81, the Highline College Education Association (HCEA) represented HCC teaching staff (certified employees) in negotiating collective bargaining agreements with the College (the HCEA agreements). The agreements addressed primarily the salary and benefits of HCC instructors. Exhibits 17 through 19 are excerpts from the annual agreements covering the 1974-75, 1975-76, and 1976-77 academic years (these agreements are salary schedules only). Exhibits 20 and 21 are excerpts from biennial agreements, 1977-78 through 1978-79, and 1979-80 through 1980-81.

17. HCC instructors also worked under an HCEA collective bargaining agreement for the academic years 1981-82 through 1982-83, Exhibit 31. Though this two-year agreement was not in effect for the years at issue in this proceeding, Ms. Hahn placed it in evidence as a statement of the College's policy on hour ranges for full-time faculty in years before that agreement took effect.
18. The HCEA agreements for the academic years 1975-76 through 1982-83 give the impression of a transitional time in the relationship between the College and its teaching staff. After the administration expanded to include a separate position for Dean of Instruction, the Salary Programs changed in format to cover two academic years at once, use a different system of numbering, and expand the text and topics addressed.
19. The Salary Programs for 1975-1981, Exhibits 17-21, do not document any agreement between certified teaching staff and the administration at HCC defining the course load for full-time instructional faculty. The negotiated agreements in the record for academic years 1975-76 through 1978-79 do not address an instructor's assignments or status as full-time. TR 190-192.
20. The 1979-81 Faculty Salary program expanded to include, for the first time, a section addressing "Faculty Assignments for Full-time Faculty." Section 602 covered assignments for teaching faculty. As of the date the agreement was ratified, sections 602.1 and 602.2 had places for values for standards for credit and contact hour ranges for full-time instructors, but contained no actual values. Rather, sections 602.1 and 602.2 indicate that in an ongoing process, each division and the Dean of Instruction were to assign full-time faculty according to separate ranges of credit hours and contact hours to be agreed upon later. Exhibit 21, p. 7-8. The Program indicates that a full-time teaching load could vary from one division to another, and the teaching staff and the administration had not yet agreed on standards for full-time teaching loads. Subsection 602.1 goes on to address certain issues involved in developing full-time assignment expectations. It states the following:

In determining the credit hour full-load assignments, . . . class credit hours or equivalent shall be counted excluding special low enrollment classes. Variable credit classes, mathematics laboratory, learning skills laboratory, reading laboratory, combined class sections and team teaching assignments may be included as determined by the Dean of Instruction in consultation with the appropriate division chairman.

In calculating the contact hour full-load assignments, class contact hours for lecture and laboratory as defined by the appropriate entry in the Course Master File shall be used. Clinical, systems, and other hours that may be listed in the course master entry may be included as determined by the Dean of Instruction in consultation with the appropriate division chairman.

In assigning classes the Dean of Instruction and the division chairman shall consider both the credit and contact hour ranges. It is intended that individual faculty loads meet both ranges, although all individual assignments must meet one of the criteria unless adjusted as provided in other sections of this Salary

Program.

21. The 1981-83 HCEA agreement, Exhibits 22 (partial) and 31 (full), is a notably more extensive document than its predecessors. This agreement expands the Faculty Salary Program to include such things as tenure rules, reductions in force, academic freedom and personnel policies. In section 600, Assignments for Full-Time Faculty, this collective bargaining agreement incorporated values for those items that had been left undefined when the 1979-81 HCEA agreement was ratified. Section 602 sets the annual contact hour range for most divisions at a maximum of 660 hours per academic year (220 per quarter). Developmental Studies requires a contact hour range of 660 to 990 per academic year (220 to 330 per quarter), with an asterisked notation that these DSD contact hours may be "not all in class contact hours."
22. Despite the changes in other areas, the HCEA agreements 1975-76 through 1982-83 are consistent in their treatment of part-time instructors. Each of the "Faculty Salary Programs" incorporated a part-time faculty salary schedule, separate from the terms for full-time faculty. The part-time salary schedules set hourly pay rates that vary with instructor credentials and teaching experience at HCC. For example, the 1976-77 Part-Time Faculty Salary Schedule sets a rate of \$12.00 per hour for an instructor with a Masters' degree and four or more quarters of teaching experience at HCC. Exhibit 19, p. 2. The later Salary Programs show increases in the hourly rates.

The HCEA agreements, including the 1981-83 agreement, also stated the following:

The number of hours, to which the above hourly rates will be applied, shall be calculated as follows.

Contact hours:

The actual hours a part-time instructor meets with the students in a classroom lecture or laboratory setting as defined by the appropriate entry in the Course Master File. The above pay scale for these hours includes basic responsibilities for planning, preparation, and student evaluation necessary for quality instruction.

Additional hours of compensation may be paid for the following:

Extended Planning and Preparation

Hours may be added to a part-time instructor's agreement because the nature of the course requires considerably more than average or expected planning and preparation for quality instruction. For [academic year] the majority of part-time instructors will receive compensation up to one additional hour for every ten hours of lecture as defined by the Course Master File.

Extended Student Evaluation

Hours may be added to a part-time instructor's agreement because the nature of the course requires the instructor to spend additional time to assure complete evaluation of the student's performance. For [academic year] the majority of part-time instructors will receive compensation up to one additional hour for

ATTACHMENT A

every ten hours of lecture as defined by the Course Master File.

Office Hours and Advising

Hours may be added to a part-time instructor's agreement for assigned office hours and student advising.

Administrative Duties and/or Committee Work

Hours may be added to a part-time instructor's agreement to compensate for assigned administrative duties as general faculty responsibilities; e.g., committee work, special projects, etc. [all sic]

(Italic emphasis added.)

Ms. Hahn's Instructor Contracts

23. HCC contracted with part-time instructors by quarter rather than by academic year,⁹ and in these quarterly contracts would set out the classes that part-time instructors were to teach in each quarter, and the number of hours for which the instructor would be compensated, and for what types of work. New cautionary text appears in the contracts for Summer quarter 1978 and later, including the advice that the work represented by a particular quarterly contract was "temporary in nature," creating no expectation for continuing employment. Exhibit 6, pp. 12-28.
24. Ms. Hahn, a part-time instructor, taught at HCC for 24 consecutive academic quarters. HCC contracted with Ms. Hahn separately in each quarter, usually one contract for the quarter but sometimes two separate contracts for different courses in the same quarter. Each contract showed the number of hours to be compensated, and their purpose. HCC agreed to pay Ms. Hahn for the contracted hours at a specified hourly rate. For example, the following terms appear in Ms. Hahn's contract for Spring quarter 1977:

| Course Number | Class Hours | Extended Hours | Extended Hours | Office Hours | Other Hours | Total Hours |
|----------------|-------------|----------------|----------------|--------------|-------------|-------------|
| T 065 - DS 047 | 44 | 4.4 | 4.4 | | | 52.8 |
| T 070 - DS 047 | 44 | 4.4 | 4.4 | | | 52.8 |
| T 040 - DS 046 | 44 | 4.4 | 4.4 | | | 52.8 |
| T 055 - DS 046 | 44 | 4.4 | 4.4 | | | 52.8 |

Total Hours 211.2
Rate \$ 12.00
Total Amount \$ 2,534.00

Exhibit 6, p. 7.

In these quarterly part-time instructor contracts, HCC compensated Ms. Hahn for classroom hours (lecture and laboratory) and non-classroom hours (extended

⁹ HCC contracts with full-time faculty for a full academic year at a time (three consecutive quarters, Fall through Spring, totaling 170 days). Testimony of Kledzik, TR 178.

preparation and extended student evaluation, office hours and other duties). The lecture and laboratory hour values for each numbered course came from a course master file maintained by the office of the HCC Dean of Instruction (those values having been approved for the course master file by the State Board of Community and Technical Colleges). The hour values for preparation, evaluation and other duties were authorized by the Salary Program (HCEA agreement) in effect for the particular academic year(s).

25. According to the contracts in Exhibits 6 and 30, Ms. Hahn taught courses in such areas as Textbook Reading and Study Skills, other reading improvement classes, Basic Vocabulary, and Spelling Improvement. Exhibit 9. She characterized the classes she taught as "study skills types of classes." TR 43.
26. The following table, collecting data from the contracts in Exhibit 6 for Ms. Hahn's teaching services in the 24 quarters, shows the total hours she agreed to work for each quarter at issue, and the breakdown of those hours.

| Quarter | Courses | Total Hours | Preparation | Lecture | Extended Prep | Student Eval | Office Hours | Other |
|-------------|---------|-------------|-------------|---------|---------------|--------------|--------------|-------|
| Fall 1975 | 6 | 316.8 | 26.4 | 26.4 | 0 | 0 | 0 | 0 |
| Winter 1976 | 4 | 211.2 | 17.6 | 17.6 | 0 | 0 | 0 | 0 |
| Spring 1976 | 3 | 158.4 | 13.2 | 13.2 | 0 | 0 | 0 | 0 |
| Summer 1976 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Fall 1976 | 5 | 264 | 22 | 22 | 0 | 0 | 0 | 0 |
| Winter 1977 | 4 | 206.8 | 15.4 | 15.4 | 0 | 0 | 0 | 0 |
| Spring 1977 | 4 | 211.2 | 17.6 | 17.6 | 0 | 0 | 0 | 0 |
| Summer 1977 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Fall 1977 | 3 | 158.4 | 13.2 | 13.2 | 0 | 0 | 0 | 0 |
| Winter 1978 | 3 | 158.4 | 13.2 | 13.2 | 0 | 0 | 0 | 0 |
| Spring 1978 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Summer 1978 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Fall 1978 | 2 | 109.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Winter 1979 | 4 | 211.2 | 17.6 | 17.6 | 0 | 0 | 0 | 0 |
| Spring 1979 | 3 | 158.4 | 13.2 | 13.2 | 0 | 0 | 0 | 0 |
| Summer 1979 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Fall 1979 | 5 | 264 | 22 | 22 | 0 | 0 | 0 | 0 |
| Winter 1980 | 5 | 264 | 22 | 22 | 0 | 0 | 0 | 0 |
| Spring 1980 | 4 | 241.2 | 35 | 18.5 | .9 | 1.8 | 0 | 0 |
| Summer 1980 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |
| Fall 1980 | 5 | 264 | 22 | 22 | 0 | 0 | 0 | 0 |
| Winter 1981 | 5 | 264 | 22 | 22 | 0 | 0 | 0 | 0 |
| Spring 1981 | 4 | 211.2 | 17.6 | 17.6 | 0 | 0 | 0 | 0 |
| Summer 1981 | 2 | 105.6 | 8.8 | 8.8 | 0 | 0 | 0 | 0 |

27. Ms. Hahn taught all the courses listed in the contracts for the quarters in this table.¹⁰ Ms. Hahn's contracts between Fall 1975 and Summer 1981 designated over 80% of her compensated time as for lecture or laboratory (with the exception of Spring quarter 1980, where the lecture percentage was closer to 77%).
28. During the academic years 1975-76 through 1980-81, the HCC Continuing Education Department was responsible for coordinating part-time instructor contracts. A secretary in that department, Mary Anderson, as part of her normal duties prepared the contracts for signature and reported contract data to the State Board for Community and Technical Colleges (State Board).
29. From Fall quarter 1976 forward, Ms. Hahn's contracts contain a space designated for a numerical FTE (1976) or FTE-F value. FTE-F stands for "full-time equivalent – faculty," a state standard for full-time employment. Each of the Exhibit 6 contracts from Ms. Hahn's personnel file displays an FTE or FTE-F value notation in this space, some handwritten and some typewritten. Ms. Anderson, the secretary for the HCC Continuing Education Department, placed the handwritten FTE notations on Ms. Hahn's quarterly contracts as she assigned an FTE-F value to those contracts for her data reports to the State Board. The FTE/FTE-F values were apparently often placed on the HCC contract copies after Ms. Hahn's copy had been sent to her.¹¹

Ms. Hahn's TRS membership/credit after the Mader Settlement

30. To implement the terms of the *Mader Settlement Agreement*, DRS sought to determine TRS membership eligibility and service credit for Ms. Hahn and several other former part-time HCC instructors. DRS requested HCC to estimate these instructors' days worked, month by month, following the process in WAC 415-112-335(1).
31. Denise Kledzik, Payroll and Benefits Manager for HCC, responded to the DRS request. Ms. Kledzik first began work for HCC in 1982, so she had not been employed with HCC between 1975 and 1981, but by 2003, Ms. Kledzik had been involved in writing faculty contracts for the College for over ten years. Ms. Kledzik developed a "template" spreadsheet for compiling and reporting the data requested by DRS.
32. To estimate the instructors' work days following the process in WAC 415-112-335(1), Ms. Kledzik needed to determine the part-time workload for each individual instructor. For Ms. Hahn's report, Ms. Kledzik examined the copies of Ms. Hahn's quarterly part-time instructor contracts in her HCC personnel file. Ms. Kledzik understood lecture and laboratory hours listed in these contracts to be contact hours, and she understood contact hours to be the equivalent of in-class teaching hours in the rule. From her earlier employment in the Continuing

¹⁰ One course was cancelled in Fall quarter 1978, but her contract shows compensation for 4 lecture hours for that course; those 4 hours appear in column 5 for that quarter, see Exhibit 6, p. 13.

¹¹ Several of Ms. Hahn's personal contract copies lack an FTE or FTE-F number notation.

Education Department with Mary Anderson, she recognized the numerical notations on the contracts ("FTE" or "FTE-F") as a percentage comparing Ms. Hahn's compensated contact hours for the particular quarter to the number of contact hours expected of full-time faculty.

33. Ms. Kledzik also independently calculated some of the part-time workload percentages for Ms. Hahn's report. She requested information from the office of the Dean of Instruction for any College records that might be helpful for making the workload comparison. After receiving copies of the College's written FTE guidelines from 1975 and 1977, Exhibits 7 and 8, she used 330 contact hours per quarter as the standard for full-time instructors in the Developmental Studies Department at HCC for the years in question. Ms. Kledzik compared the contact hours in Ms. Hahn's quarterly contracts against this standard, and found that the FTE or FTE-F numerical notations on Ms. Hahn's contracts matched her own percentage calculations. Ms. Kledzik then used the FTE numbers on the HCC file copies of the contracts as the workload factor required by WAC 415-112-335(1)(b).
34. To complete the WAC 415-112-335(1) work-days estimate, Ms. Kledzik identified each working day in each school quarter from Fall 1975 through Summer 1981 and totaled the number of working days in a quarter. She multiplied the number of working days in the quarter by the part-time workload factor (FTE-F percentage) for each contract, to arrive at an estimate of the number of days Ms. Hahn had taught in that quarter. Ms. Kledzik summarized her calculations in her spreadsheet for Ms. Hahn's employment, Exhibit 1.
35. DRS then took the monthly estimated work days Ms. Kledzik had reported for Ms. Hahn, grouped them by fiscal year, and totaled the number of estimated work days for each fiscal year. To arrive at a proportionate amount of service credit for each of the years in question, the Department divided the annual total of estimated work days by the HCC official academic year, 170 days. Exhibit 3. These calculations resulted in proportionate TRS service credit as follows:

| | |
|-----------------|------------|
| 1975-76: | .55 |
| 1976-77: | .60 |
| 1977-78: | .39 |
| 1978-79: | .44 |
| 1978-80: | .69 |
| <u>1980-81:</u> | <u>.66</u> |

Total: 3.33

Since DRS had already granted Ms. Hahn a full year's TRS service credit for the academic year 1981-82, it did not add any value to these calculations for her Summer quarter 1981 contract.

36. Ms. Hahn disagrees with Ms. Kledzik's part-time workload calculations (and the Department's assignment of TRS service credit based on those calculations) because she disagrees with the use of the 330-contact-hour-per-quarter

standard for full-time instructors in the DSD. According to Ms. Hahn's recollection, the DSD Coordinator was the only one of the five to six instructors in that department who was considered full-time, and the DSD Coordinator taught only 4 classes per week, or 176 contact hours per quarter. She believes that a 330-contact-hour standard would result in the Coordinator having had to teach 7 to 8 classes per quarter. Ms. Hahn recalls that Developmental Studies instructors at the time were dissatisfied with the College's expectation that an FTE in the DSD required more contact hours in a week or quarter than an FTE for instructors teaching standard academic courses, and this dissatisfaction was a subject of discussion among the DSD instructors.

CONCLUSIONS OF LAW

1. The Department of Retirement Systems (DRS) has jurisdiction over the parties and the subject matter of this appeal under Chapter 41.50 RCW, Chapter 41.32 RCW and Chapter 415-08 WAC.
2. The Presiding Officer, as the Director's designee, issues this final order under RCW 41.50.060 and RCW 34.05.425 and .461.
3. DRS is charged with the administration and management of the Teachers' Retirement System, and with the responsibility for implementing the provisions of chapter 41.32 RCW (the TRS authorizing statutes). RCW 41.50.030(1)(b). This includes the authority to decide all questions of eligibility covering membership, service credit, and benefits. RCW 41.32.025.
4. Ms. Hahn has the burden of proof in this appeal. WAC 415-08-420(2).
5. One statute, RCW 41.32.270, governs crediting of service in TRS Plan 1. The terms of this statute have not changed since 1947.

Service rendered for four-fifths or more of the official school year of the school district or institution in which a teacher is employed shall be credited as a year's service regardless of the length of the school term, but in no case shall more than one year of service be creditable for service rendered in one fiscal year. Service rendered for less than four-fifths of the official school year shall be credited for that portion of the school year for which it was rendered: PROVIDED, That no service of less than twenty days in any school year shall be creditable.

Two of these terms are defined in RCW 41.32.010.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(26)(a) "Service" for Plan 1 members means the time during which a member has been employed by an employer for compensation.

These same definitions were in effect for Plan 1 members during the times at issue.¹²

6. The first aspect of RCW 41.32.270 important to this decision is that it equates a fiscal year and a school year, so that teaching service between July 1 of one year and June 30 of the following year is within one school, or fiscal, year. The academic quarters in the table in Finding of Fact 26 are grouped by fiscal year as RCW 41.32.170 and 41.32.010(12) define it. Almost all teaching hours in any Summer quarter will occur after July 1, and so are properly included in the following school (fiscal) year. Thus, the hours that Ms. Hahn contracted to teach in 1976, her first Summer quarter at HCC, would be counted in the 1976-77 academic year. (Contrast this with the table on pp. 8-9 of Ms. Hahn's post-hearing brief, where Summer quarter contact hours improperly appear in the previous school year.)
7. The second significant aspect of RCW 41.32.270 is that the school year is the "official school year of the school district or institution in which a teacher is employed." The school year to be used in determining what part of a school year a teacher has worked is specific to one district or institution.
8. The third significant aspect of the statute is that it permits part-time teachers to obtain TRS service credit for some proportionate part of a year's teaching service ("for that portion of the school year for which it was rendered"). For teaching service within the official school year of at least 20 days but less than four-fifths of the year, the statute authorizes DRS to grant part of a year's TRS service credit. The number of days worked by a teacher in an official school year will be crucial to fixing the proportionate TRS service credit earned. The statute, however, gives no guidance about how to determine when a teacher has worked four-fifths of a school year, or how to determine some lesser portion.
9. In 1996¹³ DRS adopted a rule as an aid to determining service credit for TRS members who are part-time faculty at state community and technical colleges. The rule produces an estimate of days worked for these particular instructors.

WAC 415-112-335 Calculating service credit for part-time community and technical college employees. Most community and technical colleges employ academic employees under contracts expressed in terms of a certain number of contact hours, which are usually limited to actual time spent in the classroom. Most academic positions require more time to be spent providing services to the college than are reflected in the contact hours. However, actual hours worked are not submitted by the academic employees nor recorded by the college. This subsection adopts a method for estimating hours of work in order to determine membership eligibility and service credit in plan I and plan II. This estimate is to be used solely for that purpose. The estimate is not a representation by the department of actual hours worked and is not to be used as a basis for calculating other benefits or salary for technical college and community college academic employees.

¹² In 1974 these definitions were in subsections (13) and (28), respectively, of RCW 41.32.010.

¹³ The Department adopted WAC 415-112-335 as an emergency rule in September 1996, WSR 96-18-072, and as a permanent rule effective May 15, 1997, without change.

(1) **Plan I.** In order to estimate the number of days worked by a TRS I technical college or community college faculty academic employee for a particular month, the college will:

(a) Determine the number of working days in the month as defined by the college's adopted academic calendar;

(b) Determine the part-time workload for the employee. The part-time workload is the percentage of the part-time employees' [sic] weekly in-class teaching hours to the weekly in-class teaching hours required of a full-time instructor in that employee's discipline at the college; and

(c) Multiply the number of working days in the month by the academic employee's part-time workload.

The resulting number is an estimate of days worked by the academic employee during the month. The college will report this estimate to the department for the sole purpose of determining plan I service credit and/or membership eligibility.

(2) **Plan II.** . . .

(3) **Definitions.** "In-class teaching hours" means contact classroom and lab hours in which full-time or part-time academic employees are performing contractually assigned teaching duties. The in-class teaching hours shall not include any duties performed in support of, or in addition to, those contractually assigned in-class teaching hours.

10. The Department has approved Ms. Hahn's membership in TRS, so teaching service needed for membership (RCW 41.32.240) is not at issue. Ms. Hahn is acknowledged to be a *Mader* class member. The *Mader* Settlement Agreement adopted the court's conclusion that WAC 415-112-335 "contains the method of calculating the 'equivalent' days and hours worked by part-time community and technical colleges [sic] for the purpose of retirement benefits . . ." In support of the Agreement the Department represented that it would apply WAC 415-112-335 retroactively, without a time limit, to determine class members' service credit and membership eligibility in TRS "if there is no other evidence establishing their actual hours of work for their employer."¹⁴

Application of WAC 415-112-335(1)

11. WAC 415-112-335 is the sole appropriate rule for determining Ms. Hahn's service credit under RCW 41.32.270, since she worked for HCC under part-time instructor contracts in the years at issue. Subsection (1) sets out the formula for estimating her monthly days worked, to then be used for determining her service credit in TRS Plan 1 for the academic years 1975-76 through 1980-81. If the result of applying WAC 415-112-335(1) to Ms. Hahn's teaching service in any of these years is a number of days that exceeds 80% (four-fifths) of the days in the College's official school year, she would be credited with a full year of service

¹⁴ The Department declined to apply this rule retroactively prior to the *Mader* Class Action Settlement Agreement. *In re Appeal of Richardson*, DRS Docket No. 99-T-006.

credit for that academic (fiscal) year. If the result is a number of days less than 80%, her service credit for that academic (fiscal) year will be some fraction of a full year of service credit.

12. The rule's preamble recites that actual hours worked by contracted instructors are not reported by the instructors or recorded by the community and technical colleges, but must usually be determined from contracts "expressed in terms of a certain number of contact hours." There is no record in this proceeding of actual hours worked by Ms. Hahn in the years at issue, and there has been no challenge to the use of this rule to estimate her hours worked.
13. The rule "adopts a method for **estimating** hours of work in order to determine membership eligibility and service credit in plan I . . . " (emphasis added). Application of the rule does not produce a number of "actual" hours worked, or factual "data" about that.¹⁵ The rule provides a method for producing an estimate, in the absence of reliable documentation of an instructor's actual hours worked.
14. The process in subsection (1) produces an estimate of "the **number of days worked** by a TRS I technical college or community college faculty academic employee **for a particular month . . .** " The rule assigns the task of developing the estimate to the community or technical college. The three subsections detail the steps of the process, which uses data specific to both the college and the particular instructor, to reach the goal of an estimate of days a part-time instructor worked within a given month.
15. Subsection (1)(a) yields a series of numbers (the working days at a particular college for individual calendar months) from objective, easily ascertainable data. The number of working days in each month for an academic year appears from a simple overlay of an individual community college's academic calendar for a particular academic year on a conventional twelve-month calendar. As the Department has observed, Ms. Hahn has not challenged HCC's determination of the number of working days at HCC in each month for September 1975 through August 1981.
16. Subsection (1)(b) is the focus of the parties' disagreement here. Subsection (1)(b) calls for an intermediate comparison that produces a number representing a part-time instructor's teaching load ("part-time workload"). Subsection (1)(b) compares the weekly in-class teaching hours of a part-time instructor to the weekly in-class teaching hours required of a full-time instructor in that employee's discipline at the college. It is assumed that Ms. Hahn's "discipline" is the same as her instructional department at HCC, Developmental Studies.¹⁶

¹⁵ "The estimate is not a representation by the department of actual hours worked . . ." WAC 415-112-335.

¹⁶ WAC 415-112-335 does not equate "discipline" with "department." However, neither the rule nor any other definitions in chapter 415-112 WAC clarify what is meant by "discipline." The parties have both argued their cases here as though "discipline" and "department" were interchangeable. This usage is adopted as practically and legally appropriate to this case.

17. The rule uses the term "in-class teaching hours" for the required comparison. The rule further defines "in-class teaching hours" as "contact classroom and lab hours in which full-time or part-time academic employees are performing contractually assigned teaching duties." Thus, in-class teaching hours are the same as "contact hours" in Ms. Hahn's contracts, the HCEA agreements, and the HCC *Guideline and FTE-F Definition* documents. The WAC 415-112-335(3) definition of "in-class teaching hours" and the definition of instructors' "contact hours" in the HCEA agreement part-time faculty salary schedules are functionally identical, and the subsection (3) definition is consistent with the language in the rule's preamble. Therefore, the comparison in subsection WAC 415-112-335(1)(b) is between Ms. Hahn's contact hours and the contact hours expected of a full-time faculty member in her discipline (Developmental Studies) at HCC. HCC contracted to compensate Ms. Hahn for both contact hours and non-contact hours, but the rule is concerned only with a comparison of contact hours.
18. In order to make this subsection (1)(b) comparison, it is necessary to determine the number of in-class teaching hours required of a full-time instructor in the part-time instructor's discipline at the same college. This is where the parties most specifically disagree. Ms. Hahn asserts that in the Developmental Studies Department (DSD) at HCC in the years in question, 220 contact hours per quarter (660 per academic year) constituted a full-time instructor's in-class teaching hours requirement. DRS computes Ms. Hahn's service credit using a different standard, from HCC's estimate of work days, which assumed that 330 contact hours per quarter (990 per academic year) constituted a full-time instructor's in-class teaching hours requirement for instructors in the DSD.
19. The evidence is less than conclusive regarding what were the in-class teaching hours required of a full-time instructor in the Developmental Studies Department at HCC during the years at issue. The Department relies on the numbers provided by HCC as part of its days-worked estimate, and those numbers in turn depend upon 1975-77 guidelines maintained in the office of Dean of Instruction of the College. Ms. Hahn relies on her own memory of circumstances in the HCC Developmental Studies Department 25 to 30 years ago. A discussion of the necessary proof is in order. The Department notes that subsection (1) of WAC 415-112-335 describes a process to be undertaken by the pertinent community or technical college, and seeks to prevent Ms. Hahn from taking issue with the estimate information that HCC provided to DRS. This approach is too narrow for hearings before this agency. Where DRS has computed an instructor's service credit using community college estimates produced pursuant to the formula in WAC 415-112-335(1)(a)-(c), that individual should be able to use the forum of a *de novo* hearing before DRS to show why DRS should not rely on the estimate information produced by the community college in its application of the rule. There is no indication that any other forum is available for correcting possibly erroneous community college estimates of monthly hours worked by part-time instructors.
20. On the other hand, the estimate information produced by the community college following subsection (1) will withstand challenge unless there is a convincing showing that it is incorrect. WAC 415-112-335(1) expressly charges the individual college, not DRS, with the responsibility for developing the estimate. As part of

the process of estimating the number of teaching days provided by a part-time instructor in a given month, the community college is to determine both the requirements for in-class teaching hours of a full-time faculty position in a particular discipline, and the part-time workload of a part-time instructor in the same discipline. The appellant has the burden of showing error, such as proof that the college either failed to follow the rule's requirements, or used unsupportable underlying data, or both.

21. Here, the HCC estimate of Ms. Hahn's monthly hours worked does withstand challenge. It has not been shown to be incorrect. The evidence tends to show that the College followed the rule's requirements, and used supportable data.
22. Ms. Hahn challenges HCC's use of 330 contact hours per quarter as the in-class teaching hours required of a full-time instructor in the Developmental Studies Department in 1975 through 1981. HCC's use of this standard is reasonable and supported by the evidence. Exhibit 8, the 1977 *Highline Community College FTE-F Definition* document approved by the then Dean of Instruction, Dr. Robert McFarland, states explicitly at Exception 3.c. that High School Completion, Adult Basic Education, and Developmental Studies require contact hours of 330 per quarter for each FTE-F (full-time equivalent - faculty). Consistent with this statement in Exhibit 8, the 1975 *Faculty Assignment Guideline*, Exhibit 7, states in its Special Considerations and Exceptions at paragraphs e., f. and i. that High School Completion requires contact hours of 330 per quarter for each FTE-F, Adult Basic Education requires 440 contact hours per quarter for each FTE-F, and for learning laboratory assignments, 30 hours per week (for 11 weeks, this is 330 hours) constitutes "the scheduled assignment."
23. An observation about the College's use of terminology may serve to assist this discussion. The guidelines in Exhibits 7 and 8 not only specify more laboratory hours than lecture hours for an FTE, they also *value* Developmental/Adult Basic Education contact hours of either type as though they were laboratory, not lecture, hours. It is important, therefore, not to place too much meaning on the designation of Ms. Hahn's contracted contact hours as "lecture" hours (with the single exception of 22 hours designated as "laboratory" in the contract for Winter quarter 1977). The HCC 1975 and 1977 guidelines specified that all DSD teaching hours have the same value, for FTE purposes, as laboratory hours (i.e., twice as many laboratory hours as lecture hours are required for an FTE). Because she was teaching exclusively in the Developmental Studies Department, Ms. Hahn's class teaching hours may have been designated "lecture" in her contracts but the College's 1975 and 1977 guidelines, by requiring so many more contact hours in DSD, show that the College valued DSD "lecture" hours as though they were laboratory hours, in contrast to "lecture" hours in other disciplines.
24. The evidence establishes that the College contracted with its full-time faculty using annual contracts covering three consecutive quarters. The College contracted with part-time instructors like Ms. Hahn on a quarterly basis. If the quarterly instructors were teaching Developmental Studies classes, the College guidelines required them to teach courses with contact hours totaling 330 per quarter in order to be considered full time. Ms. Hahn's testimony affirms that the DSD instructors

discussed their perception that the College treated them unfairly when it did not recognize their contact hours as full-time, when their weekly contact hours were the same as or more than the weekly contact hours of faculty in other disciplines. This perception of unfairness tends to confirm that the College acted in accordance with its guidelines at that time by requiring more contact hours for an FTE in the Developmental Studies Department than in other disciplines.

25. The College's 1975 and 1977 guidelines are an appropriate basis for the College's 2003 determination of a full-time teaching load in the Developmental Studies department. Ms. Hahn has not shown that the HCC documents are unreliable in any respect. Ms. Hahn's testimony, some thirty years later, that the College did not abide by its own guidelines at the time is not supported or corroborated by any other evidence, especially anything of an official nature, and lacks detail that would make it convincing as against the College's written guidelines.
26. Ms. Hahn testified that only one instructor in the DSD, the Department head, was considered full-time. For reasons not known to this record, during Ms. Hahn's service in the College's Developmental Studies Department, the Department head frequently taught a number of courses with contact hours comparable to those Ms. Hahn taught. The documents in the record show that throughout the period at issue the College retained a certain amount of discretion regarding the assignment of full-time faculty, a matter to be settled between the Department head and the Dean of Instruction. It inheres in the 1975 *Guideline* document (Exhibit 7 paragraphs e. through k. differ from the less directive language of the first part of the document), and even in the 1975-76 Salary Schedule there are provisions for faculty release time, which then, according to Exhibit 7, paragraph j., required approval of the vice-president (before the administration included a Dean of Instruction). The College's discretion was expressly recognized in the 1979-81 HCEA agreement. Exhibit 21, p. 7. Ms. Hahn has not produced any evidence to explain why the DSD department head taught considerably less than a full-time load, such as under what type of contract the department head performed his or her duties, or any possible differences between Ms. Hahn's duties and those of the department head. If the College required fewer class hours of the DSD department head, it seems likely that the College was exercising its discretion regarding the assignment of its full-time faculty, and that discretion would be consistent with its guidelines and agreements.
27. Ms. Hahn points to the annual range of 660-990 contact hours set in the 1981-83 HCEA agreement as full-time instruction in the DSD, and she testified to her memory that in the six years preceding that agreement the College had used the lower end of that range, based primarily on her observation that the DSD department head taught less than a 330-contact-hour-per-quarter load (and likely less than a 220 contact hour per quarter load, below the low end of the range). Taking her assertion as true, again this would be consistent with the College's retention of a certain amount of discretion in the assignments of its full-time faculty. Ms. Hahn, however, was not a full-time HCC faculty member, as evidenced by the format of her contracts. The 330-contact-hour FTE standard specified for Developmental Studies, Adult Basic Education and learning laboratory in Exhibits 7 and 8 is at the high end of the range of contact hours per

quarter agreed to in the 1981-83 HCEA document, but is still consistent with the range.

28. Ms. Hahn apparently disagreed with the College's FTE policies in the 1970's that valued the part-time instructor hours in Developmental Studies as though they were laboratory rather than lecture hours, and carries this disagreement forward here. On the legal standard to be applied, she disagrees with the terms of WAC 415-112-335(1) that direct the employing college to determine requirements for full-time status as well as part-time workload percentages. Ms. Hahn reads the statutes generally charging DRS with the responsibility to administer the Teachers' Retirement System¹⁷ as creating a duty on DRS' part to investigate and change the WAC 415-112-335(1) estimates provided to it by HCC. This asserted duty is not apparent in these statutes, and the terms of WAC 415-112-335(1) are specifically applicable here. In essence, Ms. Hahn seeks to have DRS substitute its judgment for that of HCC on the standard of full-time employment in the Developmental Studies department at HCC between 1975 and 1981. Where there has been no convincing showing of error, however, DRS is without authority to "second-guess" HCC's estimate of Ms. Hahn's days worked by using a lower standard for full-time employment in the DSD than HCC did.
29. What Ms. Hahn has shown in this proceeding is that the College could have chosen a different full-time teaching standard against which to measure her part-time teaching service; by using a lower standard for a full-time instructor in the DSD, the College could have performed its work-days estimate calculations in a manner that would produce more TRS service credit for Ms. Hahn. This is not the same as proving that the College's estimate of her monthly work days was incorrect. Ms. Hahn has not shown that there is more reliable or more accurate evidence of the contact hours required of a full-time HCC Developmental Studies instructor than that relied on by the College.
30. In summary, a review of the evidence does not demonstrate anything incorrect or improper in the College's use of 330 contact hours per quarter (990 contact hours per academic year of three quarters) as the standard for full-time equivalent work in the DSD, to estimate a part-time DSD instructor's days worked under WAC 415-112-335(1)(b).
31. Applying this standard to Ms. Hahn's contracted contact hours, the part-time workload percentages that HCC used to estimate Ms. Hahn's monthly days worked as reported to DRS have not been shown to be in error. The workload percentages are independently calculable from the table in Finding of Fact 26 (horizontally shaded bars), and remain constant whether calculated on a weekly or quarterly basis. (One apparent error is discussed below). Ms. Hahn suggested that these percentages were suspect or unreliable, emphasizing that her own contract copies lacked many of the FTE/FTE-F percentage notations on the College's personnel file copies. In light of all the evidence, it is not significant that the percentage notations were originally placed on the HCC personnel file copies for other reasons, as part of the duties of the Continuing Education Department's

¹⁷ RCW 41.50.005, 41.50.060, 41.32.025.

secretary, and did not appear on many of Ms. Hahn's personal copies of the contracts.

32. One apparently erroneous part-time workload percentage is noted but not corrected here. For Spring quarter 1980, the record includes two contracts between Ms. Hahn and HCC. The first, dated March 20, 1980, lists four courses at 44 contact hours apiece, for a total of 176 contact hours. The second, dated June 16, 1980, lists one course with 9 contact hours. Exhibit 6, pp. 22-23; Exhibit 30, pp. 26, 28. Together the two contracts call for 185 contact hours in that quarter; 185 contact hours out of a full-time teaching load of 330 hours equates to 56 percent, not 67 percent. The 67 percent figure used by HCC likely is the sum of the FTE-F numbers on the two contracts (64 on the first and 3 on the second). But the 64 percent figure on the March 20 contract is obviously overstated when all other four-course contracts in the record bear an FTE-F designation of no more than 53 percent. The error will be allowed to stand here because reducing the FTE percentage for that quarter would ultimately yield a lower value for Ms. Hahn's TRS 1979-80 school year service credit, and such a reduction at this stage in the proceedings would have the unacceptable effect of penalizing Ms. Hahn for asking for a hearing to appeal her service credit amount.
33. WAC 415-112-335(1) required HCC to apply the part-time workload percentages for Ms. Hahn's quarterly contact hours to the total work days in the corresponding HCC academic quarter, and no further errors appear in this step (disregarding any effect of the Spring 1980 error).
34. Once the community college completes the process set out in WAC 415-112-335(1) and supplies the estimated number of work days for a part-time instructor, DRS can set a teacher's service credit amount. The rule does not address DRS' process at this point, but RCW 41.32.270 permits part-time teachers to obtain TRS service credit for some proportionate part of a year's teaching service ("for that portion of the school year for which it was rendered"). This presupposes a days-to-days comparison, so DRS would need to state the relationship of the estimated number of Ms. Hahn's days worked in an academic year (as estimated by the College under WAC 514-112-335(1)) to the total number of work days in the College's school year.
35. Again, no error has been proven in the DRS actions of grouping the estimated work days by fiscal year, and dividing the total workdays in each fiscal year by the total work days in HCC's official school year. DRS properly determined the proportionate amounts of service credit for each fiscal year, and together these total 3.33 years for the academic years 1975-76 through 1980-81.

ORDER

Ms. Hahn's request for an additional 2.34 years of service credit in the Teachers' Retirement System, Plan 1, is denied. Her service credit in TRS Plan 1 is 3.33 years for the academic years 1975-76 through 1980-81.

Notice of Further Appeal Rights

Reconsideration: Any party to this appeal may ask the DRS Presiding Officer to reconsider this Final Order. Within ten days of the mailing of this Final Order, the party must file a petition for reconsideration, addressed to the Presiding Officer at the Department of Retirement Systems, PO Box 48380, WA 98504-8380. The petition for reconsideration must state specific reasons why the Final Order should be changed. "Filing" means **delivery** to DRS, not mailing; the ten-day time limit is strictly observed. RCW 34.05.010(6), 34.05.470.

Judicial Review: A party may request judicial (Superior Court) review of this Final Order. A petition for judicial review must be filed within 30 days of the Final Order mailing date. **Any party seeking Superior Court review should carefully read and comply with the Administrative Procedure Act requirements (chapter 34.05 RCW).** Petitions for judicial review go directly to the Superior Court; it is not necessary to request DRS reconsideration. RCW 34.05.470, 34.05.542.

Done this 22nd day of April, 2005.



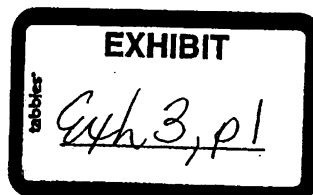
ELLEN G. ANDERSON
Presiding Officer
Department of Retirement Systems

ATTACHMENT A

ATTACHMENT B

ATTACHMENT B

| Earn period | Days in Month WAC 415-112-335(a) | FTEF WAC 415-112-335(b) | Days Worked WAC 415-112-335(c) | Days in Fiscal Year | Service Credit In Fiscal Year RCW 41.32.270 | TRS Plan 1 Fiscal Year |
|-------------|-------------------------------------|----------------------------|-----------------------------------|------------------------|---|---------------------------|
| Sep-75 | 7 | 78% | 5.46 | | | |
| Oct-75 | 23 | 78% | 17.94 | | | |
| Nov-75 | 17 | 78% | 13.26 | | | |
| Dec-75 | 9 | 78% | 7.02 | | | |
| Jan-76 | 20 | 52% | 10.40 | | | |
| Feb-76 | 19 | 52% | 9.88 | | | |
| Mar-76 | 14 | 52% | 7.28 | | | |
| Mar-76 | 3 | 39% | 1.17 | | | |
| Apr-76 | 22 | 39% | 8.58 | | | |
| May-76 | 20 | 39% | 7.80 | | | |
| Jun-76 | 8 | 39% | 3.12 | | | |
| Jun-76 | 8 | 26% | 2.08 | 93.99 | 0.55 | 75/76 |
| Jul-76 | 21 | 26% | 5.46 | | | |
| Aug-76 | 10 | 26% | 2.60 | | | |
| Sep-76 | 4 | 65% | 2.60 | | | |
| Oct-76 | 21 | 65% | 13.65 | | | |
| Nov-76 | 19 | 65% | 12.35 | | | |
| Dec-76 | 12 | 65% | 7.80 | | | |
| Jan-77 | 21 | 52% | 10.92 | | | |
| Feb-77 | 20 | 52% | 10.40 | | | |
| Mar-77 | 12 | 52% | 6.24 | | | |
| Mar-77 | 4 | 52% | 2.08 | | | |
| Apr-77 | 21 | 52% | 10.92 | | | |
| May-77 | 20 | 52% | 10.40 | | | |
| Jun-77 | 8 | 52% | 4.16 | | | |
| Jun-77 | 9 | 26% | 2.34 | 101.92 | 0.60 | 76/77 |
| Jul-77 | 20 | 26% | 5.20 | | | |
| Aug-77 | 10 | 26% | 2.60 | | | |
| Sep-77 | 5 | 39% | 1.95 | | | |
| Oct-77 | 21 | 39% | 8.19 | | | |
| Nov-77 | 19 | 39% | 7.41 | | | |
| Dec-77 | 11 | 39% | 4.29 | | | |
| Jan-78 | 21 | 39% | 8.19 | | | |
| Feb-78 | 19 | 39% | 7.41 | | | |
| Mar-78 | 13 | 39% | 5.07 | | | |
| Mar-78 | 4 | 26% | 1.04 | | | |
| Apr-78 | 20 | 26% | 5.20 | | | |
| May-78 | 22 | 26% | 5.72 | | | |
| Jun-78 | 7 | 26% | 1.82 | | | |
| Jun-78 | 10 | 26% | 2.60 | 66.69 | 0.39 | 77/78 |
| Jul-78 | 19 | 26% | 4.94 | | | |
| Aug-78 | 10 | 26% | 2.60 | | | |
| Sep-78 | 5 | 26% | 1.30 | | | |
| Oct-78 | 22 | 26% | 5.72 | | | |
| Nov-78 | 19 | 26% | 4.94 | | | |
| Dec-78 | 10 | 26% | 2.60 | | | |
| Jan-79 | 22 | 54% | 11.88 | | | |
| Feb-79 | 19 | 54% | 10.26 | | | |
| Mar-79 | 12 | 54% | 6.48 | | | |



ATTACHMENT B

| Earn period | Days In Month WAC 415-112-335(a) | FTEF WAC 415-112-335(b) | Days Worked WAC 415-112-335(c) | Days In Fiscal Year | Service Credit In Fiscal Year RCW 41.32.270 | TRS Plan 1 Fiscal Year |
|-------------|-------------------------------------|----------------------------|-----------------------------------|------------------------|---|---------------------------|
| Mar-79 | 5 | 40% | 2.00 | | | |
| Apr-79 | 21 | 40% | 8.40 | | | |
| May-79 | 22 | 40% | 8.80 | | | |
| Jun-79 | 5 | 40% | 2.00 | | | |
| Jun-79 | 10 | 27% | 2.70 | 74.62 | 0.44 | 78/79 |
| Jul-79 | 21 | 27% | 5.67 | | | |
| Aug-79 | 8 | 27% | 2.16 | | | |
| Sep-79 | 5 | 67% | 3.35 | | | |
| Oct-79 | 23 | 67% | 15.41 | | | |
| Nov-79 | 19 | 67% | 12.73 | | | |
| Dec-79 | 9 | 67% | 6.03 | | | |
| Jan-80 | 20 | 66% | 13.20 | | | |
| Feb-80 | 19 | 66% | 12.54 | | | |
| Mar-80 | 14 | 66% | 9.24 | | | |
| Mar-80 | 1 | 67% | 0.67 | | | |
| Apr-80 | 22 | 67% | 14.74 | | | |
| May-80 | 21 | 67% | 14.07 | | | |
| Jun-80 | 9 | 67% | 6.03 | | | |
| Jun-80 | 6 | 27% | 1.62 | 117.46 | 0.69 | 79/80 |
| Jul-80 | 22 | 27% | 5.94 | | | |
| Aug-80 | 11 | 27% | 2.97 | | | |
| Sep-80 | 7 | 67% | 4.69 | | | |
| Oct-80 | 23 | 67% | 15.41 | | | |
| Nov-80 | 17 | 67% | 11.39 | | | |
| Dec-80 | 9 | 67% | 6.03 | | | |
| Jan-81 | 20 | 67% | 13.40 | | | |
| Feb-81 | 19 | 67% | 12.73 | | | |
| Mar-81 | 14 | 67% | 9.38 | | | |
| Mar-81 | 2 | 53% | 1.06 | | | |
| Apr-81 | 22 | 53% | 11.66 | | | |
| May-81 | 20 | 53% | 10.60 | | | |
| Jun-81 | 9 | 53% | 4.77 | | | |
| Jun-81 | 7 | 27% | 1.89 | 111.92 | 0.66 | 80/81 |
| Jul-81 | 22 | 27% | 5.94 | | | |
| Aug-81 | 10 | 27% | 2.70 | | | |
| TOTAL | | | | | 3.33 | |

Ms. Hahn has
already
received
full 1 yr of s.c.
for '81-'82
fiscal year

ATTACHMENT C

ATTACHMENT C

HIGHLINE COMMUNITY COLLEGE FTE-F DEFINITION

The following reflects local Highline Community College practices in defining full-time equivalent faculty load:

1. The basic load for most college courses follows this chart:

CHART 1: Percent of faculty load by contact hours. (Note: Numbers listed below or to the right of the double lines are percent of FTE-F. Numbers above or to the left of double lines are contact hours.)

↓
LECTURE CONTACTS PER QUARTER

| | 0 | 11 | 22 | 33 | 44 | 55 | 66 | 77 | 88 | 99 | 110 |
|-----|----|----|----|----|----|----|----|----|----|----|-----|
| 0 | 0 | 7 | 13 | 20 | 27 | 33 | 40 | 47 | 53 | 60 | 67 |
| 11 | 3 | 10 | 17 | 23 | 30 | 37 | 43 | 50 | 56 | 63 | |
| 22 | 7 | 13 | 20 | 27 | 33 | 40 | 47 | 54 | 59 | | |
| 33 | 10 | 17 | 23 | 30 | 37 | 43 | 50 | 57 | | | |
| 44 | 13 | 20 | 27 | 33 | 40 | 47 | 54 | | | | |
| 55 | 17 | 23 | 30 | 37 | 43 | 50 | | | | | |
| 66 | 20 | 27 | 33 | 40 | 47 | | | | | | |
| 77 | 23 | 30 | 37 | 43 | | | | | | | |
| 88 | 27 | 33 | 40 | | | | | | | | |
| 99 | 30 | 37 | | | | | | | | | |
| 110 | 33 | | | | | | | | | | |

LABORATORY
CONTACTS
PER
QUARTER

A full load is defined by contact hours as 165 per quarter (15 per week for 11 weeks) of lecture activities or 330 per quarter (30 per week) of laboratory activities.

2. An additional factor is class limit. The percentage figure derived from Chart 1 should be multiplied by a factor from the following chart, where a normal class load is considered 28 to 38 students.

CHART 2: Factoring for class limits.

| STUDENTS | FACTOR |
|---|--------|
| (Classes of less than 10 are normally not included in calculating a full-time load) | |
| 11 - 12 | .4 |
| 13 - 16 | .5 |
| 17 - 19 | .6 |
| 20 - 21 | .7 |
| 22 - 24 | .8 |
| 25 - 27 | .9 |
| 28 - 39 | 1.0 |
| 40 - 42 | 1.1 |
| 43 - 45 | 1.2 |
| 46 - 48 | 1.3 |
| 49 - 52 | 1.4 |
| 53 - 55 | 1.5 |
| 56 - 58 | 1.6 |
| 60 - 62 | 1.7 |
| 63 - 65 | 1.8 |
| 66 - 69 | 1.9 |
| 70 - 80 | 2.0 |

3. Exceptions:

- The following lab activities have other than 330 contact hour requirement.
 - Physical education activities have 220 quarter laboratory contacts as a full load. Multiply Chart 1 by factor of 1.5 to equal adjusted percent FTE-F.
 - Health Occupation clinical labs (nursing, respiratory therapy) is 24 per week or factor of 1.25 of Chart 1.
 - Mathematics and Writing Lab is 24 per week (264 per quarter) or factor of 1.25 of Chart 1.
- Welding facilities, machining, glass blowing, print shop, and other physical facilities limitations may dictate lower class load limits.
- High School Completion, Continuing Education, Adult Basic Education, Developmental Studies, and Student Services require contact hours of 330 per quarter for each FTE-F. The class limit for these classes may be reduced to .5 of Chart 2.
- The full-time load for Librarians is 35 hours per week.

RWMcf:ds
9/7/77

Counseling - 30 hrs per week considered F-T

ATTACHMENT D



HIGHLINE COMMUNITY COLLEGE
Community College District 9
Midway, Washington 98031

ATTACHMENT D

Fall _____ 19____
Winter _____ 19____
Spring X 19 76
Summer _____ 19____

This agreement is between the COMMUNITY COLLEGE DISTRICT IX and Ellen Smith
instructor.

| Course Number | Laboratory Hours | Lecture Hours | Extended Plan & Prep | Extended Student Eval. | Office Hrs. | Other Duties | Hours |
|---------------|------------------|---------------|----------------------|------------------------|-------------|--------------|-------|
| T083 - DS 046 | | 44 | 4.4 | 4.4 | | | 52.8 |
| T115 - DS 047 | | 44 | 4.4 | 4.4 | | | 52.8 |
| T119 - DS 047 | | 44 | 4.4 | 4.4 | | | 52.8 |
| | | | | | | | |

Comments on Special Assignments:

39

Total Hours 158.4
Rate \$ 11.00
Total Amount \$ 1,742.40

As a prerequisite of payment under this agreement, the instructor agrees to provide proper qualifying documents, i.e., transcript of college courses or vocational certification, as required for placement on the Part Time Salary Schedule.

It is further agreed that the above classes(es) may be cancelled by COMMUNITY COLLEGE DISTRICT IX at the discretion of the College, because of insufficient enrollment or other extenuating circumstances, thus nullifying this agreement. (See Paragraph 9065, Faculty Handbook.)

The Agreement expressed herein in writing constitutes the entire agreement between COMMUNITY COLLEGE DISTRICT IX and the instructor and no oral statement shall add to or supersede any of its provisions.

HIGHLINE COMMUNITY COLLEGE

March 24, 1976
Date
060.1N63.BH
Budget Number

Shirley B. Gaden 3-25-76
Vice President
George Dillon
Authenticated by
Ellen R Smith
Instructor

Note: Until this agreement has been signed and received by the College, no contract exists between the College and the instructor.

ATTACHMENT E



HIGHLINE COMMUNITY COLLEGE
Community College District 9
Midway, Washington 98031

Fall _____ 19____
Winter X 19 77
Spring _____ 19____
Summer _____ 19____

ATTACHMENT E

This agreement is between the COMMUNITY COLLEGE DISTRICT IX and Ellen Smith
instructor.

| Course Number | Laboratory Hours | Lecture Hours | Extended Plan & Prep | Extended Student Eval. | Office Hrs. | Other Duties | Hours |
|---------------|------------------|---------------|----------------------|------------------------|-------------|--------------|-------|
| T015 - DS 030 | 22 | 22 | 2.2 | 2.2 | | | 48.4 |
| T073 - DS 046 | | 44 | 4.4 | 4.4 | | | 52.8 |
| T091 - DS 047 | | 44 | 4.4 | 4.4 | | | 52.8 |
| T096 - DS 047 | | 44 | 4.4 | 4.4 | | | 52.8 |

Comments on Special Assignments:

Total Hours 206.8

52

Rate \$ 12.00

FTE - F

Total Amount \$ 2,481.60

As a prerequisite of payment under this agreement, the instructor agrees to provide proper qualifying documents, i.e., transcript of college courses or vocational certification, as required placement on the Part Time Salary Schedule.

It is further agreed that the above classes(es) may be cancelled by COMMUNITY COLLEGE DISTRICT IX at the discretion of the College, because of insufficient enrollment or other extenuating circumstances, thus nullifying this agreement. (See Paragraph 9065, Faculty Handbook.)

The Agreement expressed herein in writing constitutes the entire agreement between COMMUNITY COLLEGE DISTRICT IX and the instructor and no oral statement shall add to or supersede any of its provisions.

HIGHLINE COMMUNITY COLLEGE

January 11, 1977

Date

060.1690.BH = 1,900.80

Budget

060.1TKC.BH = \$580.80

Budget

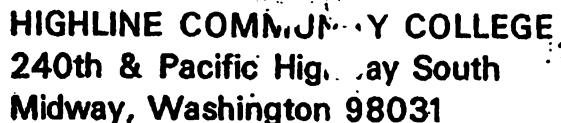
Shirley B. Gordon 1/13/77
President
George Dillon
Authenticated by
Ellen R. Smith
Instructor

Note: Until this agreement has been signed and received by the College, no contract exists between the College and the instructor.

Exh 6, p 6

White - Continuing Education Copy, Yellow - Instructor's Copy, Pink - Continuing Education Copy, Goldenrod - Payroll

ATTACHMENT F



Summer_____ 19____

This agreement is between the COMMUNITY COLLEGE DISTRICT IX and Ellen Smith instructor.

| Course Number | Laboratory Hours | Lecture Hours | Extended Plan & Prep | Extended Student Eval | Office Hours | Other Duties | Total Hours |
|-----------------|------------------|---------------|----------------------|-----------------------|--------------|--------------|-------------|
| T 100- Read 060 | | 44 | 4.4 | 4.4 | | | 52.8 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| | | | | |
|--------|---------------------------|----------------|--------------|------------------|
| Date | <u>January 14, 1980</u> | <u>13</u> | Total Hours | <u>52.8</u> |
| | | <u>FTE - F</u> | | |
| Budget | <u>001.03.011.1804.BH</u> | | Rate | \$ <u>16.55</u> |
| | | | | |
| Budget | <u></u> | | Total Amount | \$ <u>873.84</u> |

As a prerequisite of payment under this agreement, the instructor agrees to provide proper qualifying documents, i.e., transcript of college courses or vocational certification, as required for placement on the Part Time Salary Schedule. (The total amount of payments under this contract may be increased during the term of the agreement by action of the college's Board of Trustees.)

It is further agreed that the above class(es) may be cancelled by COMMUNITY COLLEGE DISTRICT IX at the discretion of the College, because of insufficient enrollment or other extenuating circumstances, thus nullifying this agreement. The employment agreement is subject to the laws of the State of Washington, the rules and policies of the State Board for Community College Education and of the Board of Trustees of Community College District No. 9 as now or hereafter amended. Employment under this agreement is temporary in nature and neither this agreement nor any rule, practice, policy or procedure shall be construed as providing the employee with an expectancy of continuing employment. The employee shall be subject to assignment, reassignment and transfer by the college president throughout the term of this agreement. This contract cancels and supersedes all prior contracts issued for any portion of the period indicated above.

The Agreement expressed herein in writing constitutes the entire agreement between COMMUNITY COLLEGE DISTRICT IX and the instructor and no oral statement shall add to or supersede any of its provisions.

- ☐ You qualify for the State insurance program.
- ☐ Our records indicate that you no longer qualify for the State contribution to your insurance program. You may continue coverage on a self-payment basis.

Note: You must contact the Personnel office if either box above is checked.

Comments on Special Assignments:

Additional Agreement.

Shirley B. Gordon 1-16-80
President

President

George D Don

Authenticated By

Alex R. Smith
Instructor

Instructor

170

Exh 6, p. 21

Until this agreement has been signed and received by the College, no contract exists between the College and the instructor.

ATTACHMENT G

ATTACHMENT G

ELLEN HAHN
Service Credit Analysis
School Year, 170 days

| Quarter | Earn period | Days Worked WAC 415-112-335(c) | Days grouped by Fiscal Year | Service Credit grouped by Fiscal Year | Days grouped per Hahn | Service Credit grouped per Hahn |
|---------|-------------|-----------------------------------|-----------------------------------|---|--------------------------|---------------------------------------|
| Fall | Sep-75 | 5.46 | | | | |
| | Oct-75 | 17.94 | | | | |
| | Nov-75 | 13.26 | | | | |
| | Dec-75 | 7.02 | | | | |
| Winter | Jan-76 | 10.40 | | | | |
| | Feb-76 | 9.88 | | | | |
| | Mar-76 | 7.28 | | | | |
| Spring | Mar-76 | 1.17 | | | | |
| | Apr-76 | 8.58 | | | | |
| | May-76 | 7.80 | | | | |
| | Jun-76 | 3.12 | | | | |
| Summer | Jun-76 | 2.08 | 93.99 | 0.55 | | |
| | Jul-76 | 5.46 | | | | |
| | Aug-76 | 2.60 | | | 102.05 | 0.60 |
| Fall | Sep-76 | 2.60 | | | | |
| | Oct-76 | 13.65 | | | | |
| | Nov-76 | 12.35 | | | | |
| | Dec-76 | 7.80 | | | | |
| Winter | Jan-77 | 10.92 | | | | |
| | Feb-77 | 10.40 | | | | |
| | Mar-77 | 6.24 | | | | |
| Spring | Mar-77 | 2.08 | | | | |
| | Apr-77 | 10.92 | | | | |
| | May-77 | 10.40 | | | | |
| | Jun-77 | 4.16 | | | | |
| Summer | Jun-77 | 2.34 | 101.92 | 0.60 | | |
| | Jul-77 | 5.20 | | | | |
| | Aug-77 | 2.60 | | | 101.66 | 0.60 |
| Fall | Sep-77 | 1.95 | | | | |
| | Oct-77 | 8.19 | | | | |
| | Nov-77 | 7.41 | | | | |
| | Dec-77 | 4.29 | | | | |
| Winter | Jan-78 | 8.19 | | | | |
| | Feb-78 | 7.41 | | | | |
| | Mar-78 | 5.07 | | | | |
| Spring | Mar-78 | 1.04 | | | | |
| | Apr-78 | 5.20 | | | | |
| | May-78 | 5.72 | | | | |
| | Jun-78 | 1.82 | | | | |
| Summer | Jun-78 | 2.60 | 66.69 | 0.39 | | |
| | Jul-78 | 4.94 | | | | |
| | Aug-78 | 2.60 | | | 66.43 | 0.39 |
| Fall | Sep-78 | 1.30 | | | | |
| | Oct-78 | 5.72 | | | | |
| | Nov-78 | 4.94 | | | | |
| | Dec-78 | 2.60 | | | | |
| Winter | Jan-79 | 11.88 | | | | |
| | Feb-79 | 10.26 | | | | |
| | Mar-79 | 6.48 | | | | |
| Spring | Mar-79 | 2.00 | | | | |
| | Apr-79 | 8.40 | | | | |

ATTACHMENT G

ELLEN HAHN
Service Credit Analysis
School Year, 170 days

| Quarter | Earn period | Days Worked WAC 415-112-335(c) | Days grouped by Fiscal Year | Service Credit grouped by Fiscal Year | Days grouped per Hahn | Service Credit grouped per Hahn |
|---------|-------------|-----------------------------------|-----------------------------------|---|--------------------------|---------------------------------------|
| | May-79 | 8.80 | | | | |
| | Jun-79 | 2.00 | | | | |
| Summer | Jun-79 | 2.70 | 74.62 | 0.44 | | |
| | Jul-79 | 5.67 | | | | |
| | Aug-79 | 2.16 | | | 74.91 | 0.44 |
| Fall | Sep-79 | 3.35 | | | | |
| | Oct-79 | 15.41 | | | | |
| | Nov-79 | 12.73 | | | | |
| | Dec-79 | 6.03 | | | | |
| Winter | Jan-80 | 13.20 | | | | |
| | Feb-80 | 12.54 | | | | |
| | Mar-80 | 9.24 | | | | |
| Spring | Mar-80 | 0.67 | | | | |
| | Apr-80 | 14.74 | | | | |
| | May-80 | 14.07 | | | | |
| | Jun-80 | 6.03 | | | | |
| Summer | Jun-80 | 1.62 | 117.46 | 0.69 | | |
| | Jul-80 | 5.94 | | | | |
| | Aug-80 | 2.97 | | | 118.54 | 0.70 |
| Fall | Sep-80 | 4.69 | | | | |
| | Oct-80 | 15.41 | | | | |
| | Nov-80 | 11.39 | | | | |
| | Dec-80 | 6.03 | | | | |
| Winter | Jan-81 | 13.40 | | | | |
| | Feb-81 | 12.73 | | | | |
| | Mar-81 | 9.38 | | | | |
| Spring | Mar-81 | 1.06 | | | | |
| | Apr-81 | 11.66 | | | | |
| | May-81 | 10.60 | | | | |
| | Jun-81 | 4.77 | | | | |
| Summer | Jun-81 | 1.89 | 111.92 | 0.66 | | |
| | Jul-81 | 5.94 | | | | |
| | Aug-81 | 2.70 | | | 103.01 | 0.61 |
| TOTALS | | | 3.33 | | 3.33 | |

*Ms. Hahn has
already received
full 1 yr of s.c.
for '81-'82
fiscal year*

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COURT OF APPEALS
DIVISION II

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NO. 34978-7-II

STATE OF WASHINGTON

**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

[Signature]
DEPUTY

ELLEN HAHN,

Appellant,

CERTIFICATE OF MAILING

v.

WASHINGTON STATE
DEPARTMENT OF
RETIREMENT SYSTEMS,

Respondent.

The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the below date, I mailed the Brief of Respondent Department of Retirement Systems, and this Certificate of Mailing to counsel for all parties on the record by depositing a postage prepaid envelope in the U.S. Mail addressed as follows:

Eric Hansen
Attorney at Law
PO Box 9100
Federal Way, WA 98063-9100

DATED this 11th day of September, 2006.

[Signature: Kelly L. Greaves]
KELLY L. GREAVES
Legal Assistant